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BOARD MEETING
STATE OF CALIFORNIA
INTEGRATED WASTE MANAGEMENT BOARD

Joe Serna Jr., CalEPA Building
1001 I Street
2nd Floor
Byron Sher Auditorium
Sacramento, California

Tuesday, June 16, 2009
9:39 a.m.

HE SUK JONG
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A P P E A R A N C E S

BOARD MEMBERS

Ms. Margo Reid Brown, Chair

Ms. Sheila Kuehl

Mr. John Laird

Ms. Carole Migden

Ms. Rosalie Mulé

STAFF

Mr. Mark Leary

Mr. Elliot Block

Ms. Tracey Cottingim

Mr. Tom Estes

Ms. Kristen Garner

Ms. Elizabeth Huber

Mr. Howard Levenson

Mr. Bill Orr

Ms. Rubia Packard

Mr. Ted Rauh

ALSO PRESENT

Mr. Glenn Acosta, Los Angeles County Sanitation
Districts

Mr. Chuck Helget, Republic Services

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1 Mr. Nick Lapis, Californians Against Waste
2 Mr. George Larson, Waste Management, Inc.
3 Mr. Michael Mohajer, Los Angeles County Integrated
4 Waste Management Task Force
5 Ms. Rachel Oster, Recology
6 Mr. Herman Robbins, Kern County Waste Management
7 Department
8 Mr. Larry Sweetser, Rural Counties Environmental
9 Services Joint Powers Authorities
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1 CHAIRPERSON BROWN: Good morning. Welcome
2 to the June meeting of the California Integrated Waste
3 Management Board. I'd like to call the meeting to
4 order and ask Kristin to call the roll.

5 EXECUTIVE ASSISTANT GARNER: Kuehl?

6 BOARD MEMBER KUEHL: Here.

7 EXECUTIVE ASSISTANT GARNER: Laird?

8 BOARD MEMBER LAIRD: Here.

9 EXECUTIVE ASSISTANT GARNER: Migden?

10 (Board Member Migden is not present.)

11 EXECUTIVE ASSISTANT GARNER: Mulé?

12 BOARD MEMBER MULÉ: Here.

13 EXECUTIVE ASSISTANT GARNER: Brown?

14 CHAIRPERSON BROWN: Here.

15 We'll hold the roll open, and Member Migden
16 will be here shortly.

17 I would like to remind people to turn their
18 cell phones into vibrate mode. There are speakers on
19 the back -- speaker slips on the back table. If you
20 would like to speak to any of items on the agenda
21 today, please bring your slip to Kristen.

22 Ask any Members if they have any ex partes
23 to report.

24 (No audible response.)

25 CHAIRPERSON BROWN: All up-to-date. And ask

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1 everybody to stand for the Pledge of Allegiance.

2 (Whereupon, the Pledge of

3 Allegiance was recited in unison.)

4 CHAIRPERSON BROWN: Thank you. Our first
5 report is from the Executive Director, Mark.

6 MR. LEARY: Good morning, Madam Chair and
7 Members. Two items for my Executive Director's
8 report: One is a follow on to the Board's direction
9 in regards to the financial assurance regs from last
10 month. As we came to appreciate the implementation of
11 that direction, we came to understand that going
12 forward with development of regs pursuant to that
13 direction and providing for a 45-day commentary, we
14 would still also need to include in those regs some
15 reference to how the closed or closing landfills would
16 be affected. And with the changing direction on open
17 and active landfills pursuant to your direction last
18 month, we ultimately have two sets of regs that would
19 go forward.

20 In conversations among ourselves and,
21 actually, in conversations I've had with a couple of
22 you since then, our suggested approach -- or
23 recommended approach would be to try to make very
24 rapid progress on the issue of closed and closing
25 landfills here in the next month or two, come back to

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1 the Board in August with recommendations for actions
2 for providing direction in regards to closed and
3 closing landfills, and then with both directions
4 solidified, go forward at that point with one reg
5 package that will provide clarity for our stakeholders
6 in regards to both open and active pursuant to your
7 direction last month and closed and closing pursuant
8 to direction you would give us in August and do it
9 once rather than, potentially, twice.

10 But in offering that -- or in suggesting
11 that approach, I would also suggest that if we -- our
12 optimism is not justified and we can't get
13 direction -- we can't reach a reasonable conclusion
14 for the closed and closing landfills in August, we
15 would go ahead and launch that direction in the 45-day
16 period for open and active immediately, and then we'll
17 hold off on making -- in further resolving and further
18 effort in regards to closed and closing.

19 And in the optimistic approach, again as we
20 move forward on closed and closing in our interest in
21 moving quickly, that expeditiousness will not be at
22 the cost of the Board Members. We will keep you
23 abreast of progress. We will not attempt to jam a
24 decision to you at the last minute simply because
25 we've taken a while to get there in August. If we

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1 can't give you a reasonable amount of time in
2 considering the options that we've developed in effort
3 conversations with our stakeholders, then we won't go
4 in August and we'll go back to the July direction.

5 That sounds a little confusing, maybe, but
6 the justification simply is rather than doing two
7 completely different reg packages, if we can get the
8 direction on closed and closing, we can do it in one
9 and have the whole issue taken care of or in a more
10 efficient way, at least in our view.

11 And then I do have a second item, but if you
12 have questions, I'd be happy to entertain.

13 CHAIRPERSON BROWN: I would be fine with
14 that as long as there is the backstop that the package
15 moves forward. And this issue has been discussed over
16 the last 18 months, so it is an issue that has been
17 somewhat discussed with our stakeholders. They seem
18 -- or I am hoping that they are primed and ready to
19 look at the issue and make some resolution. And if it
20 isn't obvious at the beginning of July, then I think
21 that we do need to do it separately.

22 MR. LEARY: We do have an interaction
23 scheduled with the stakeholders in early July, so
24 we're ready to start that conversation. And as you
25 suggest, we've had lots of conversations, and the

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1 issues are primed and focused.

2 CHAIRPERSON BROWN: Okay. Sheila?

3 BOARD MEMBER KUEHL: I'd like some
4 commitment about a timeline for the Board.

5 MR. LEARY: Yes, ma'am.

6 BOARD MEMBER KUEHL: Because I -- you know,
7 I know that everyone does their best, but I often feel
8 that I get information very late. And all week -- all
9 that means is that I would have to say, "I don't have
10 enough information," and we end up in the same place
11 only two months later.

12 MR. LEARY: Well, I will commit to briefing
13 you and all the Board Members at least via e-mail
14 after that stakeholder interaction in July so you'll
15 know exactly what occurred in that meeting and how the
16 issues got focused. And then to the extent that we're
17 ready to present options to the Board in August -- our
18 normal timeline would be to provide the items two or
19 three weeks in advance of the Board meeting. Let's
20 say if I can't get you that information three weeks in
21 advance of the Board meeting, then all bets are off.

22 BOARD MEMBER KUEHL: In advance of the --

23 MR. LEARY: The August consideration.

24 CHAIRPERSON BROWN: Well, can I ask, maybe
25 to bridge the gap, what is the date of the meeting in

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1 July, first of all, Ted?

2 MR. RAUH: It's the 9th of July.

3 CHAIRPERSON BROWN: Can we have a notetaker
4 or some sort of compilation of what transpired, and
5 that information -- it's always available, but I'd
6 like it at least on each of the Member's calendar so
7 they -- and/or their advisor can either participate,
8 listen in, or at least keep track of it, and then get
9 some sort of a compilation of the discussion at the
10 meeting within the week afterwards. That way we've
11 got some information from the stakeholder input prior
12 to you taking it, digesting it, and developing a reg
13 package.

14 BOARD MEMBER KUEHL: I have an additional
15 request if the Board agrees. Of information that's
16 available now, one of the things that I think is
17 important for the Board to consider is the impact on
18 those who are already maintaining closed landfills or
19 are about to begin maintaining them and what the
20 situation is in terms of the guarantees that they have
21 made, what are the insurances that they were required
22 to put up or put up or how were they doing it, because
23 we may decide, you know, we want to enforce the same
24 kind of issues or we want to have a different
25 transition issue or timeline or whatever, and it's

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1 important for us to know what is the impact on people
2 who already have certain expectations and have taken
3 certain actions. That should be available now.

4 MR. LEARY: It is.

5 BOARD MEMBER KUEHL: Because when I get a
6 compilation of what everybody said at a meeting, it's
7 kind of like a compilation of what everybody said at a
8 meeting, so that doesn't help me. It's like I can --
9 if you want to hire me as a consultant for \$50.00
10 right now, I can tell you what many of the
11 stakeholders are going to say: "We put up some money,
12 and we don't want to put up any more. Thank you."

13 And you don't have to pay the \$50.00; I was
14 just kidding. So I think that information, so I can
15 understand what impact my decision or my thoughts will
16 have on people who already have expectations, that
17 would help.

18 BOARD MEMBER MULÉ: Right, I agree.

19 MR. LEARY: And we do have it as you
20 suggest. In fact, I think Ted could probably get it
21 to you by the end of the day, and to all the Members.
22 And that will be where we start probably with our
23 conversation with the stakeholders.

24 BOARD MEMBER KUEHL: Yeah, electronically
25 for me would be great because then I kind of know

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1 where to put these things on my desktop.

2 BOARD MEMBER MULÉ: I agree. That would be
3 helpful.

4 CHAIRPERSON BROWN: Thank you.

5 Any questions or requests for Members?

6 MR. LEARY: And then, Madam Chair, my second
7 item is hardly newsworthy. We're an organization, as
8 you've often attested, of remarkable individuals.
9 When an individual in our organization does something
10 remarkable, I tend to be a little bit of a
11 blabbermouth.

12 On Saturday, our Chief Counsel will be
13 departing in Oceanside for a race across America as
14 part of a bike team. And I'm very happy to report
15 that Elliot has raised nearly \$10,000 in support of
16 his bike team, Team Donate Life, which is about organ
17 transplants, in support of organ transplants. And I
18 think it will be -- we'll all be watching with great
19 support and great enthusiasm as Elliot does this bike
20 ride across America where he will ride and his team
21 will ride nonstop for over six days, covering
22 3,000 miles and over 100,000 (verbatim) feet change in
23 elevation as he goes across America. So I know you'll
24 join me in supporting Elliot in that noble ride of
25 his -- they call it the Race of Truth -- and he'll

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1 have our best wishes as he goes forward.

2 And with that, Madam Chair, I conclude my
3 report.

4 BOARD MEMBER KUEHL: I want to see about
5 that nonstop for six days. That's sort of amazing.

6 Do you sleep on the bike?

7 CHAIRPERSON BROWN: I think "Good luck" is
8 inadequate. We wish you the best.

9 MR. BLOCK: Thank you.

10 CHAIRPERSON BROWN: Okay. Well, with that,
11 we will move on. On our agenda, we have one audience
12 participant who would like to speak to an item on
13 consent, so we will hear that during the public
14 comment period, so I'll invite up Mike Mohajer.

15 Did you want to make a few remarks regarding
16 Item 11, which is currently on consent?

17 MR. MOHAJER: Good morning, Madam Chair. My
18 name is Mike Mohajer, and I represent L.A. County
19 Solid Waste Management Committee Task Force.

20 I apologize for not being able to attend the
21 Strategic Policy Committee last week because of the
22 budget crisis and also it's a financial hardship on
23 myself since I do this stuff as a volunteer and not
24 paid for it.

25 In reference to the Item 11, I have a number

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1 of comments which I don't think I can go over in the
2 two minutes that I was given. So with that said, I
3 will be forwarding the comments in writing on behalf
4 of the task force. Thank you.

5 CHAIRPERSON BROWN: Thank you, Mike. And,
6 actually, just for your information, if you do provide
7 them, we will -- obviously, all the Members of the
8 Board will get copies of the comments. And I believe
9 it's the staff's intention to bring the item back in
10 August with the work staff work plan for further
11 discussion.

12 MR. MOHAJER: That would be great. Thank
13 you very much.

14 CHAIRPERSON BROWN: So for your reference,
15 so if you would like to comment then.

16 Were there specific changes, or you just
17 wanted to address issues?

18 MR. MOHAJER: Combination. Issues as well
19 as changes. And I will be submitting them in writing.

20 BOARD MEMBER KUEHL: Can I have some hint
21 about that before I speak to the task force on
22 Thursday so I don't get sandbagged with a question
23 here?

24 MR. MOHAJER: Well, you will get sandbagged,
25 so I'll let you know in advance.

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1 CHAIRPERSON BROWN: Oh-oh. We'll make sure
2 you get the letter this afternoon.

3 MR. MOHAJER: Thank you.

4 CHAIRPERSON BROWN: Thank you, Mike.

5 BOARD MEMBER LAIRD: Madam Chair, I
6 appreciate the precedent that for once it's being
7 announced beforehand you'll be sandbagged. I think
8 that's great progress.

9 CHAIRPERSON BROWN: A preview of what's
10 ahead: The consent agenda includes items 1, 2, 3, 4,
11 5, and 11.

12 Does any member or anybody wish to pull any
13 items from the consent agenda for consideration or
14 discussion?

15 BOARD MEMBER LAIRD: Move to consent.

16 BOARD MEMBER MULÉ: Second.

17 CHAIRPERSON BROWN: It's been moved by
18 Member Laird and seconded by Member Mulé.

19 Kristen, can you call the roll on the
20 consent agenda.

21 EXECUTIVE ASSISTANT GARNER: Kuehl?

22 BOARD MEMBER KUEHL: Aye.

23 EXECUTIVE ASSISTANT GARNER: Laird?

24 BOARD MEMBER LAIRD: Aye.

25 EXECUTIVE ASSISTANT GARNER: Migden?

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1 BOARD MEMBER MIGDEN: Aye.

2 EXECUTIVE ASSISTANT GARNER: Mulé?

3 BOARD MEMBER MULÉ: Aye.

4 EXECUTIVE ASSISTANT GARNER: Brown?

5 CHAIRPERSON BROWN: Aye.

6 The consent agenda item passes. Thank you
7 all.

8 Item 6 is on fiscal consent. There were no
9 items that were heard only in committee this month,
10 but items 7, 9, and 10 were pulled for future
11 consideration, and Item 8 revised, and 12 we will hear
12 as part of the full Board.

13 So we'll move first to Item 6, which is
14 under Permitting and Compliance, and I'll ask the
15 Committee Chair, Mulé, if you have a report.

16 BOARD MEMBER MULÉ: Yes, thank you, Madam
17 Chair.

18 We did hear four permits. All are on
19 consent and just approved. And I do want to make note
20 that one of the permits is for fully permitting an
21 existing composting facility, so I think -- I don't
22 know how many months in a row now we've had a
23 composting facility before us for either a revised or
24 new permit.

25 We also certified Trinity County

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1 Environmental Health Division as the LEA for the
2 county. And, again, it's on fiscal consent, which we
3 will hear shortly is we approved the grant awards for
4 the Farm and Ranch Solid Waste Cleanup Program.

5 Item 7 and 9 were pulled as you mentioned.

6 And then also on Item 6, the Committee did
7 direct Staff to review the programs for criteria for
8 better utilizing those funds.

9 So with that, I conclude my report. Thank
10 you.

11 CHAIRPERSON BROWN: Thank you.

12 And then I'll go first to Ted.

13 MR. RAUH: Yes, thank you, Chair Brown and
14 Board Members. I'm Ted Rauh, program director for the
15 Waste Compliance and Mitigation Program.

16 And Item 6, as Board Member Mulé indicated,
17 is recommendation to you to approve five grants that
18 will constitute the third cycle of the farm and ranch
19 grant program for this year. Those five grants will
20 address 19 sites and total \$300,011.

21 Staff recommends that you approve the grants
22 and adopt Resolution 2009-79. And that concludes the
23 staff's presentation.

24 CHAIRPERSON BROWN: Thank you, Ted.

25 Does anybody have any questions on this

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1 item?

2 BOARD MEMBER MULÉ: Madam Chair, I would
3 like to move Resolution 2009-79.

4 BOARD MEMBER KUEHL: Second.

5 CHAIRPERSON BROWN: It's been moved by
6 Member Mulé, seconded by Member Kuehl.

7 Kristen, can you call the roll.

8 EXECUTIVE ASSISTANT GARNER: Kuehl?

9 BOARD MEMBER KUEHL: Aye.

10 EXECUTIVE ASSISTANT GARNER: Laird?

11 BOARD MEMBER LAIRD: Aye.

12 EXECUTIVE ASSISTANT GARNER: Migden?

13 BOARD MEMBER MIGDEN: Aye.

14 EXECUTIVE ASSISTANT GARNER: Mulé?

15 BOARD MEMBER MULÉ: Aye.

16 EXECUTIVE ASSISTANT GARNER: Brown?

17 CHAIRPERSON BROWN: Aye.

18 The motion passes, and we will move next to
19 our full Board items and start with Item 8 revised.

20 Ted?

21 MR. RAUH: Yes, thank you. Item 8 is
22 response to the Board direction of last month to
23 develop a short and concise report to the legislature
24 outlining the critical work that the Board's done in
25 response to AB 2296. As a result, Staff produced this

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1 three-page summary which includes the recommendation
2 which the Board directed Staff to put in the report.

3 As a result of it being released for public
4 review, we have received some comments back from
5 stakeholders indicating that perhaps Staff's effort to
6 make something very concise has been successful in its
7 being concise but also perhaps a bit too concise and
8 with not enough clarity with regard to the background
9 and basis for the recommendation.

10 So with that, obviously, you're going to
11 hear from other stakeholders and you have your own
12 views about proceeding, but at your direction, one
13 option might be for the staff to take the results of
14 the conversation today and return to you with a
15 revision to this document that perhaps provides a bit
16 more clarity with regard to the recommendations for
17 Policy Committee next month at which time we could
18 hopefully have hit the mark successfully, and you'd be
19 prepared to adopt and forward that document on to the
20 appropriate legislative members.

21 CHAIRPERSON BROWN: Okay.

22 MR. RAUH: Just if I may say, we do have a
23 brief presentation, as you can see, behind you; and to
24 make it is Bill Orr.

25 This will be Bill's last formal presentation

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1 for the Board. As you know, he is leaving, so we're
2 hoping for kindness in terms of his treatment today,
3 which he always gets, by the way.

4 CHAIRPERSON BROWN: Thank you for the
5 addition. We'll always be kind. And only because
6 it's your last presentation will we allow it.

7 I will say that I appreciate the
8 stakeholders commenting as it's coming forward. I
9 think our intention was to make it brief so that
10 people would read it, but if they choose to read just
11 a section, we don't want to omit a line or a word or
12 something that could be clarification. So I'm
13 assuming you're talking about minor modifications and
14 not major modifications.

15 MR. RAUH: Absolutely.

16 CHAIRPERSON BROWN: Okay. So just for that
17 point. And I will say I think it's important, since
18 it's due to the legislature July 1st and the Strategic
19 Policy is after that, that we informally indicate or
20 communicate with the legislature that the report has
21 been under consideration, we have a draft, and we're
22 making some minor modifications, and so it will be
23 transmitted. That way they at least have the courtesy
24 of us acknowledging that we're preparing and
25 continuing to work on it.

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1 BOARD MEMBER KUEHL: You know, we could go
2 entirely the other way, which is to call this an
3 executive summary or, you know, our report and "See 14
4 attachments," which could be everything that we
5 considered in coming to these conclusions, which shows
6 the work of the Board, I suppose, if it's not -- and
7 it doesn't -- I was just talking to Jennifer about how
8 a staff person -- since Jen was on my staff for
9 14 years -- how a staff person was treated. And she
10 said there might be seven people in the building who
11 would want to read everything, and that -- you know,
12 that would be fine. So we could consider what the
13 sort of addenda and attachments might be, but I'm not
14 saying it's required. I like the notion of a short
15 summary that a committee chair like me could read and
16 get the information from and never look at the
17 attachments, but it's possible my staff would want to
18 dig through them.

19 CHAIRPERSON BROWN: Let me ask a clarifying
20 question, if I might. In transmittal of the climate
21 report, there was the summary and a disk that had all
22 the attachments on it.

23 Would that be sufficient to -- rather than
24 making the 14 attachments on paper that is voluminous,
25 plus goes to the other extreme -- I mean, or we could

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1 make five or six and walk them around and give them
2 the option of the full -- maybe a disk --

3 BOARD MEMBER KUEHL: They generally go in
4 the recycling bin if they come in paper, but this way
5 they can be shared with the people who --

6 CHAIRPERSON BROWN: Want it. And I hope
7 there's at least seven or eight that might read it.

8 BOARD MEMBER KUEHL: Yeah, I think that's
9 about the right number.

10 MR. RAUH: And as the report is developed
11 now, there are actual links, so they can go to our Web
12 page and download the documents that they want, but we
13 could also incorporate them into a CD as well.

14 CHAIRPERSON BROWN: We'll noodle with that
15 part of it and see what's the most appropriate and
16 efficient way to make sure that they -- they do
17 acknowledge the tremendous amount of work that has
18 been put into development of this document, you know,
19 over the last 18 to 24 months or three to five years
20 with Staff and stakeholders.

21 MS. HUBER: Madam Chair, if I could say, we
22 actually have in Government Code several years ago
23 encouraged that we should start sending just executive
24 summaries over or letters linking to where you can
25 find it on our Web site or using disks for obvious

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1 reasoning. So we do have a list in the legislative
2 office of key staffers that like hard copies, so we
3 can work with program staff on that as well.

4 CHAIRPERSON BROWN: Excellent. Thank you.

5 Before we have audience, does any Member
6 have any questions or comments?

7 Actually, we need to go to Bill, who's going
8 to make his last presentation as a member of the staff
9 on this item. Hopefully, you'll be before us in your
10 new capacity, talking to us about chips as well.

11 MR. ORR: After a year.

12 CHAIRPERSON BROWN: After a year, of course.

13 MR. ORR: Thank you, Madam Chair and Board
14 Members. One thing I have learned in 23 years with
15 the Board is when to make a short presentation, so I'm
16 going to endeavor to do that right now.

17 For the record, my name is Bill Orr. I'm
18 the Division Chief of Cleanup, Closure, and Financial
19 Assurances Division.

20 What we've got on this first slide is the
21 outline of the three- to four-page summary report that
22 is your attachment, and I just wanted to highlight a
23 couple of things. First of all, the main thing I'll
24 be focusing on in the presentation is the actual
25 recommendation, but I'll do a very brief review of the

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1 numbers also so that it's clear how we rolled up those
2 numbers from the documents that we've been talking
3 about.

4 And then just as additional emphasis, the
5 last item is the key public meetings and documents
6 list. There's currently a handful of items there, and
7 at the Board's direction, we could add some additional
8 key documents to make sure that everyone had the most
9 important things to consider from our effort over the
10 last several years.

11 Briefly reviewing the post-closure
12 maintenance numbers, as we've talked about, based on
13 the closure or post-closure maintenance cost estimates
14 over a period of 100 years, the total cost would be
15 \$5.6 billion for all 282 landfills that are part of
16 the landfill system. Currently 2 billion of that
17 5.6 billion is assured, which leaves, depending on
18 which option the Board chose, between 100 million and
19 900 million in potential default exposure.

20 Based on the direction from last month's
21 Board meeting, it's actually on the low end -- what
22 I'll call the "sweet spot" of the default exposure --
23 in the order of one to two hundred million dollars
24 that could not be addressed further through
25 regulations because it would actually drive up the

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1 level of default -- potential default exposure.

2 Similarly, on corrective action, the rolled
3 up number is between \$1.8 billion and \$2.5 billion for
4 corrective action costs over that same 100-year
5 period. \$1.8 billion was what was estimated based on
6 using the financial exposure model that took into
7 account the 282 landfills, the frequency type, and
8 cost of corrective action that -- for both water
9 quality and non-water quality.

10 The additional \$700 million would be for the
11 major maintenance or the final cover replacement,
12 figured at once every 200 years. To some degree, that
13 amount may be partly covered under the base corrective
14 action, so that's why that number is presented as a
15 range. Of that, currently \$134 million is assured to
16 the Water Board for reasonably foreseeable water
17 quality corrective action.

18 The potential default exposure for this
19 particular subject, the corrective action, is between
20 one and two hundred million dollars based on the
21 Board's direction last month, but it does not include
22 any additional amount for extraordinary corrective
23 action.

24 So in summary, for a combined post-closure
25 maintenance and corrective action over 100 years, the

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1 remaining residual default based on the Board's
2 direction in May is between three and four hundred
3 million dollars that really cannot be addressed
4 through regulatory means. The need for funding for
5 that would be over the next 100 years, and that leads
6 us to the recommendation that the legislature should
7 consider the possibility of establishing a statewide
8 pooled fund to address that projected three to four
9 hundred -- that should be million dollars, not
10 thousand dollars -- residual financial exposure for
11 post-closure maintenance and corrective action.

12 The legislature may also want to size the
13 pooled fund to include an additional amount for
14 extraordinary corrective action and that the pooled
15 fund should be raised not immediately but over that
16 100-year period for its use for both post-closure
17 maintenance and corrective action as needed for solid
18 waste landfills for which the owner operator has
19 defaulted.

20 And that concludes my presentation. Are
21 there any questions?

22 CHAIRPERSON BROWN: I'll start with Sheila.

23 BOARD MEMBER KUEHL: Just in terms of the
24 recommendation to the legislature about pooled fund,
25 in light of the fact that some of the publics are

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1 having a bit of a heart attack over the issue of
2 whether they have to participate in the same pool as
3 the privates -- and we haven't actually made that
4 decision one way or the other -- if we could make it
5 "pooled funds" or "fund" or "funds." It's a very
6 small change but at least signals that we didn't make
7 the decision that what we mean is a pooled fund.

8 Now, there's still objections to the whole
9 notion and that, I think, we are taking a position
10 that we will recommend to the legislature that they
11 consider it. But, of course, I can tell you that
12 wouldn't be the be-all, end-all for the legislature
13 anyway. So that's where the discussions are going to
14 go on. But at least if we could say "pool" or
15 "poolables" (verbatim), you know, or "fund" or
16 "funds," it would not appear that we had foreclosed
17 two of them or whatever.

18 CHAIRPERSON BROWN: I agree, and I think
19 that those are the kind of changes and clarifications
20 that we're looking for in the minor changes and
21 modifications.

22 I think it omitted the part, Bill, that you
23 mentioned, the building up of the fund over a hundred
24 years as opposed to somewhat the sizing of the pooled
25 fund is unclear.

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1 I will say for my own personal, you know,
2 clarification, I certainly hope we look at zero
3 landfill before 200 years, you know, and alternatives
4 of energy production. It seems to be part of our GHG,
5 our climate consideration, so -- not that we want to
6 put everybody out of business, we're just looking at
7 new ways of handling things, hopefully, within 200
8 years.

9 But do we have any other questions? We do
10 have a stack of speaker slips but don't want to
11 preclude questions of Bill from the dais first.

12 Let me invite our speakers and say
13 if anybody -- once you speak, if we speak and you want
14 to come back, I would certainly welcome the
15 opportunity for members, as we always do, to come back
16 for clarification or questions after Board Members
17 have spoken, but we like to hear from you.

18 So, Glen Acosta, we will start with you.

19 MR. ACOSTA: Good morning, Madam Chair and
20 Board Members. I'm Glen Acosta with L.A. County
21 Sanitation Districts.

22 First, if I may, I wanted to congratulate
23 Bill Orr on his new endeavor. For myself, I just want
24 to say it's been a pleasure working with Bill over the
25 last few years; very approachable. While we may not

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1 agree on many things, he has made himself available to
2 discuss issues and hear our input. So I appreciated
3 that. Thank you, Bill.

4 And now for the Board agenda itself, you
5 know, the pooled fund was one of the most
6 controversial items discussed over the last three
7 years, and I don't think we ever really got to a
8 consensus point.

9 And I think one of the reasons for that is
10 that in order for local government and public agencies
11 to really be amenable or supportive to the idea of a
12 pooled fund, they really have to see a benefit to it,
13 because right now what we see is a pooled fund is just
14 another payment to the state that we'll never see
15 again. Right now we see a reg package that really
16 creates a huge financial burden on every operator in
17 the state and local government. Right now we see
18 local government/public agencies really managing the
19 risk of our own sites and not being necessarily a risk
20 to the state. And right now we see the Waste Board
21 trying to address every conceivable risk that may
22 exist, even those that we believe don't really exist.

23 And a good example of that is the currently
24 proposed corrective action. The notion that every
25 operator will have to replace the entire landfill

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1 cover is really not realistic or a real risk.

2 As you know, most covers are soil or dirt.
3 Dirt has a long history on earth; it's been around for
4 millions of years, and it will probably continue to be
5 around for a while. And the current reg package is
6 essentially a rolling 30 X. And I say that because
7 many operators have an existing corrective action, and
8 they will be eligible for a step down even though
9 they've probably done everything the regional boards
10 have asked of them -- have installed all the
11 environmental control systems -- and are now just
12 monitoring the results of those efforts.

13 So in order to garner the support of local
14 government agencies like ourselves, there really needs
15 to be reasonableness in the current reg package and
16 some cost-effectiveness associated with it. And at
17 minimum, if there is some relief given once the pooled
18 fund is adopted, then, I think that will create a more
19 amenable environment of support.

20 And those are my comments. Thank you.

21 CHAIRPERSON BROWN: Thank you, Glen. Hold
22 for questions from the dais.

23 Sheila?

24 BOARD MEMBER KUEHL: Thank you very much and
25 thanks for your cover to the letter and various

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1 explanations that you've sent. I have two questions:
2 One is what do you think the pooled fund is to be used
3 for, from your point of view?

4 MR. ACOSTA: Well, it shouldn't be just
5 another layer of financial assurance on top --

6 BOARD MEMBER KUEHL: What would it be used
7 for, Glen? Are you saying nothing?

8 MR. ACOSTA: No, no. Our position
9 originally was that it would be a reasonable
10 cost-effective insurance to the state in case of an
11 operator defaulting on their obligations and in case
12 of default on corrective action. I think that's been
13 our stated position. But you're essentially
14 incorporating all that risk management into the
15 current reg package so it's a disincentive now to
16 participate in a pooled fund since you've created a
17 huge financial framework that deals with all the risks
18 that Staff has pointed out, so it's almost like you're
19 double-charging for something that you're already
20 accounting for in the reg package.

21 BOARD MEMBER KUEHL: So you mean because --
22 you say essentially a 30 X although it steps down for
23 appropriate maintenance. You're saying because those
24 financial assurances are retained for regular
25 maintenance and potentially for corrective action,

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1 that the only purpose of the pooled fund is in case of
2 default and everything -- and default's already
3 covered?

4 MR. ACOSTA: Well, first of all, a default
5 is unlikely for a public entity, so -- three quarters
6 of landfills are public --

7 BOARD MEMBER KUEHL: Why is default unlikely
8 for a public entity in the current environment? I
9 mean, I understand. You still got a landfill there
10 and you're still responsible, but you're
11 not actually -- all the publics are not putting money
12 in the bank, necessarily. They're guaranteeing it on
13 the basis of actions that they can take or money that
14 they think is coming in. I don't know that -- I
15 understand that the publics feel that they are
16 probably more likely to still be around than the
17 privates. The privates don't necessarily agree in the
18 current environment. So I don't know how we can feel
19 secure.

20 MR. ACOSTA: I think the best answer I can
21 give you is that we recognize that the Waste Board
22 feels that there is a financial risk out there and
23 that there is a possibility of defaults, though rare,
24 across the state, and so we see the need for a pooled
25 fund as a backstop measure. However, it should really

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1 be a packaged deal where you're taking that into
2 consideration when you develop the reg package. And
3 it just seems that the reg package itself is loaded
4 with financial demands already on the operator and
5 you're now adding a pooled fund on top of that with
6 not relieving the package.

7 CHAIRPERSON BROWN: Well, let me ask
8 Sheila's question in a different way because she asked
9 the question and we did get a very lengthy, detailed
10 answer, but I don't think you answered to my
11 satisfaction her original question.

12 So if a pooled fund were created, what in
13 the reg package that's currently that you're saying is
14 in excess would you feel are the things that should be
15 included and covered in the pooled fund? Is it the
16 cap replacement? Is it certain kinds of catastrophic
17 failure which would include X, Y, and default?

18 I mean, that to me was your question. I
19 don't know if it was, but that's a question that I
20 have.

21 MR. ACOSTA: Let me address that, if I can.
22 The elements of the reg package should be consider --
23 reconsider there's a pooled fund are for the
24 step-downs. I think we all feel that good performance
25 is absolutely necessary, but you have criteria in

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1 there for existing corrective action and new
2 corrective action.

3 An existing corrective action as a criteria
4 for a step-down really shouldn't be part of that
5 because you're taking care of things that the regional
6 board is asking for. So if you change that, then the
7 step-down is for future bad performers, or you're not
8 addressing something that is new. That's number one.

9 The number two, the replacement of the
10 entire landfill cover as a corrective action funding
11 is a huge imposition on all landfill operators. For
12 us as an agency, if we had to replace each landfill --
13 or a fund for each replacement of our landfills'
14 covers, that's on the order of \$200 million. And I'm
15 sure if you start adding up everyone across the state,
16 it's probably a billion dollar mandate right there.
17 So I would say for a pooled fund, that should be in
18 there.

19 So those are two things, right off the bat,
20 that I can think of that should be in one or the
21 other; it can't be both.

22 BOARD MEMBER KUEHL: I think we -- I don't
23 think this is a question necessarily to Mr. Acosta,
24 but I think we should clarify because my impression,
25 honestly, was that the potential range for the funds

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1 that we want available for potential corrective
2 action, non -- well, water and non-water
3 combined could have far exceeded the cost of replacing
4 the cover and/or been lower.

5 And to some extent, we may have -- I think
6 we need to discuss whether we chose that particular
7 aspect not because we always think that the cover's
8 going to need to be replaced, although it's possible
9 that within a hundred years it will, but because the
10 amount was kind of in the mid range and we didn't want
11 to require the higher number which was estimated as a
12 potential for corrective actions, water and non-water
13 combined.

14 So in a sense -- and I'm not certain whether
15 this is the case, but it may be related more to a
16 number than it's related to the actual occurrence of
17 the replacement of a cover although, as you said,
18 dirt's been around. But, you know, after a number of
19 years, that cover is going to be different than it was
20 when it was first spread over there.

21 MR. ACOSTA: Could I mention a couple
22 things, if I may?

23 CHAIRPERSON BROWN: Sure.

24 MR. ACOSTA: The post-closure maintenance
25 plan includes restoring or fixing whatever tears,

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1 whatever settlement effects have been occurring at the
2 landfill as you go, so you are maintaining that cover
3 over the post-closure period. So it's not like all of
4 a sudden, wow, you no longer have a cover. And there
5 is a tremendous disconnect in terms of relative cost
6 between water quality and this new replacement of
7 entire cover.

8 For Puente Hills Landfill, just as an
9 example, if I recall correctly, the water quality
10 corrective action is on the order of, say, 5 million
11 or less. To replace the entire landfill cover, now
12 you're talking \$30 million. So there is a complete
13 disconnect right there.

14 Now, it would be much more reasonable if the
15 non-water quality was site specific. Like if you had
16 a landfill where you had a history of landslides in a
17 certain area, then you would say, Okay, I need to
18 account for that possibility as a corrective action;
19 that's reasonably foreseeable. But you can't assume
20 that all landfills are going to be subject to
21 landslides, that all landfills are going to lose their
22 cover. It's just not appropriate. It should be more
23 site specific. Whatever you think that your site is
24 most susceptible to, that's what you should be funding
25 for.

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1 CHAIRPERSON BROWN: We're not putting you on
2 the spot. We do have a lot of speakers. But I think
3 there's a lot of questions.

4 MR. ACOSTA: Sure.

5 CHAIRPERSON BROWN: You know, we intended
6 and we were hoping to get a lot of this on the table
7 during the workshop that we had prior to our
8 consideration of the regs, and maybe some of it wasn't
9 fettered out during that roundtable discussion, but
10 these are the kind of questions and the information
11 that we're looking for in helping to formulate these
12 kind of decisions.

13 So, you know, I'm looking forward to more
14 information coming, comparisons, analysis so that we
15 have the information to provide -- you know, in making
16 informed decisions. So I appreciate you bringing them
17 to us. It would have been helpful last month as well.
18 But we appreciate -- I mean, I think now that we've
19 got it, it's very helpful.

20 MR. ACOSTA: Thank you very much.

21 CHAIRPERSON BROWN: Did you have a question
22 before we -- we do still have a couple.

23 BOARD MEMBER MULÉ: I'm going to save my
24 questions and comments until after all the speakers.

25 CHAIRPERSON BROWN: Our next speaker is Mike

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1 Mohajer.

2 Thanks, Glen.

3 MR. MOHAJER: Good morning again, Madam
4 Chair and Members of the Board. My name is Mike
5 Mohajer, and I'm representing L.A. County Task Force.
6 And I too want to congratulate Bill for his
7 retirement, and he's been wonderful to work with, and
8 wish him the best as he becomes a retired person like
9 me for the time being. And also I want to
10 congratulate Elliot, and I appreciate what he is going
11 to do and -- due to what Mark Leary said.
12 Congratulations.

13 So with that said, Madam Chair, as we have
14 stated in the past, the task force remain opposed to
15 the pooled fund for the following reason: One of the
16 things that we have said in the past was that there is
17 a significant difference between the public agency
18 versus the private sectors.

19 And public agency is the cities and
20 counties. We are going to continue to remain in
21 place, and I can further substantiate that point that
22 even with the state in financial situation like today,
23 they are still looking toward the local government to
24 bail them out. And so when we own a landfill and we
25 operate, the situation is the same because we are

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1 still going to be held liable. Why are we being held
2 liable is because under the state's constitution, we
3 are required to provide for the solid waste management
4 of our citizens and -- under the state constitution.
5 Then if we don't do that, then we are in violations.

6 Now, once we get involved with the
7 collection of trash, we are considered generators, and
8 we are liable. Has it happened in the past? Yes. As
9 I mentioned before, I have been involved personally
10 with four landfills. And when I was working for
11 County of Los Angeles, we have paid in excess of 8,
12 9 million dollars, all during the past few years.
13 It's not a 10 years ago or 20 years ago; this is the
14 past few years. And that's why one of the reasons the
15 task force is opposed to the pooled fund.

16 This second issue that I would like to also
17 raise is that we don't agree with the statement that
18 it is put out in the staff recommendation and also in
19 the PowerPoint presentation that they said -- and I'm
20 just sort of quoting that "to properly respond and
21 limit environmental damage, state needs to get
22 involved" and that's why they need three to four
23 hundred million dollars.

24 And what I just said before, we are held, as
25 a generator, liable for cleaning up; the state is not,

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1 only for the portion of the waste that the state
2 generate, such as the Waste Board, and for the portion
3 of the waste that is being generated in this building,
4 but that's just about it.

5 And, also, another statement has been made
6 that the 300 to 400 million dollars is needed for the
7 post-closure maintenance and corrective actions that
8 cannot be addressed through regulations. And that's
9 what that three to four hundred million dollars is
10 needed.

11 And myself being a part of the consulting
12 group for the past two years, and I still really like
13 to know what are the items that cannot be addressed
14 for the closure and post-closure to the regulations.
15 If it is through the regulations, then it is a
16 responsibility of the Board, under the 2296, to come
17 up for controlling that.

18 And the other item is that, again, my
19 understanding was that a pooled fund is going to be
20 used only for extraordinary corrective action. And
21 from that aspect of it, we opposed it again because of
22 being a local government. But if the Board wants to
23 impose pooled fund at this -- recommend to the
24 legislature for adoption of a pooled fund for
25 extraordinary activities, as it's being called out,

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1 then I would strongly recommend that at that time the
2 local government ought to be held not responsible for
3 providing for this extraordinary -- and this is an
4 issue that I have raised many times in the past, and
5 answering Board Member Kuehl, but it was really
6 refreshing that after two years when you added the
7 word "s" at the end of the "pooled funds." And, you
8 know, that sort of thing means a lot for the local
9 government, but it has taken about two years for me to
10 even hear that little "s" at the end of "pooled
11 funds."

12 So if the pooled fund make a difference
13 between the public agency versus the private sector or
14 if you want to make only one pooled fund, then local
15 government must not be held liable for activities for
16 which the pooled fund is being allocated for.

17 So with that, I can answer the questions.

18 BOARD MEMBER KUEHL: What do you mean
19 "liable," Mike?

20 MR. MOHAJER: "Liable" means, as I stated,
21 right now the local government, because of our
22 responsible for protecting public health and safety at
23 local level at making arrangement for solid waste
24 collection, we are liable, as a generator, for
25 cleaning up, should a landfill generating environment

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1 -- or creating environmental contamination --

2 BOARD MEMBER KUEHL: Your own landfills?

3 MR. MOHAJER: Yes, I'm just talking about
4 landfills as a whole.

5 So if the local government is putting the
6 money aside and give that money to state and make the
7 state to be responsible for that pooled fund, then
8 that pooled fund is being collected to do certain
9 activities. For those activities that a pooled fund
10 is being allocated to, then the local government
11 should not be held liable.

12 BOARD MEMBER KUEHL: So you mean for your
13 own landfills beyond the extent of the pooled fund,
14 the county's own landfill -- I mean, the local
15 government's own landfill?

16 MR. MOHAJER: Only for the portion of the
17 pooled fund that has been allocated for extraordinary
18 corrective action.

19 BOARD MEMBER KUEHL: So let's say the pooled
20 fund is drained to pay for --

21 MR. MOHAJER: At that time the local
22 government is still going to be responsible. This is
23 the problem that we have as a local.

24 BOARD MEMBER KUEHL: You mean you want some
25 kind of language that indicates that the -- those who

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1 contribute to the pooled fund are not liable beyond
2 their contribution to the pooled fund except for their
3 own landfills?

4 MR. MOHAJER: No, I didn't say that. I said
5 they are not going to be liable for the activities --
6 plural -- for which the pooled fund has been formed
7 for, whatever that may be.

8 BOARD MEMBER KUEHL: Uh-huh.

9 MR. MOHAJER: I'm going beyond what you've
10 mentioned. It is an insurance. Basically, the pooled
11 fund is an insurance.

12 BOARD MEMBER KUEHL: So you think that if
13 the pool is drained for an activity that's not in
14 L.A. county, that the activity for which it's paying,
15 they could come back to the members of the pooled fund
16 for more money?

17 MR. MOHAJER: No, that's not what I'm just
18 saying.

19 BOARD MEMBER KUEHL: I don't understand what
20 you mean by "liability" because you've said this
21 several times to us, and I still don't understand it.

22 MR. MOHAJER: Local government is still
23 liable as it stands right now, and I'm saying since
24 the recommendation is to form a pooled fund -- and
25 that pooled fund is being formed for what purposes, as

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1 an insurance for doing what? And under that as
2 insurance to do what, then they have to be protected
3 for that purpose, so it's not going to be a
4 double-dipping.

5 CHAIRPERSON BROWN: Mike, why don't you add
6 examples. Do a for-instance.

7 MR. MOHAJER: You give --

8 BOARD MEMBER KUEHL: I think he's saying
9 that if you contribute to a pooled fund and there's a
10 major meltdown of some kind, that the operator of the
11 closed landfill should not be liable for the actions
12 that have to be taken, rather the pool should pay for
13 it, which is the intent of a pool.

14 MR. MOHAJER: No.

15 CHAIRPERSON BROWN: I think he's saying if
16 L.A. county pays into a split pooled fund and the
17 pooled fund is created for the purpose of, say, a
18 catastrophic occurrence like a complete cap failure.

19 MR. MOHAJER: Right.

20 CHAIRPERSON BROWN: So the pooled fund
21 originally is identified as a "Cap Failure Mechanism."
22 L.A. county pays into a public-only split pooled fund.
23 There's a cap failure. The pooled fund pays for the
24 replacement, and L.A. county is not liable for
25 anything that results from the repair of the cap

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1 failure. Is that correct, or clarify.

2 MR. MOHAJER: To certain degrees -- I said
3 we have two choices of discussing: Having a pooled
4 fund -- one pooled fund or having two pooled funds.

5 CHAIRPERSON BROWN: That's not the question
6 that we're asking right now. I'm asking you to
7 clarify.

8 MR. MOHAJER: You are qualifying your
9 question because you said pooled fund that public
10 participated in.

11 CHAIRPERSON BROWN: Well, I know. We've
12 added the "s," we've talked about a split pooled fund
13 so that public entities are not subsidizing a private
14 company. So in the instance -- I mean, all this is
15 conjecture anyway because there isn't a pooled fund,
16 it's merely a suggestion that a pooled fund is an
17 option. We added the "s." All these details get
18 worked out, but I think we're trying to understand
19 what your suggestion is or what you are trying to get
20 us to understand as a situational event.

21 MR. MOHAJER: Well, let's repeat again.
22 Now, we already have the funding for the closure and
23 post-closure and corrective actions. Those funds are
24 all there. And everything that is mentioned is going
25 to be maintained by the Waste Board in perpetuity

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1 until such time as the state determines there is no
2 more potential environmental hazards.

3 So now in addition to that, in addition to
4 all the moneys that goes for the closure,
5 post-closure, and corrective action, we are going to
6 also create a pooled fund, and that pooled fund is
7 that insurance in case of extraordinary. And for that
8 things, then I'm just saying the locals should not be
9 held liable nor should the private be held liable.

10 CHAIRPERSON BROWN: Okay. Thank you, Mike.

11 MR. RAUH: Chair Brown, could I -- just
12 while the next speaker comes up -- just make one
13 observation?

14 CHAIRPERSON BROWN: Yeah, the next speaker
15 is going to be Chuck Helget, so I'll let him make his
16 way up while you're adding.

17 MR. RAUH: Thank you. I would just add
18 briefly that the recommendation as it's stated in the
19 report is to deal with those issues where -- whether
20 it's one or two funds -- either the private operator
21 or the public operator does not have the funds to
22 carry out the activity. The recommendation is to size
23 of funds to deal with financial default or failure,
24 not necessarily what's failed but failure of that
25 entity to be able to perform whatever is necessary.

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1 CHAIRPERSON BROWN: True. We'll go into
2 that later and clarify that because, you know, we need
3 clarification on that. Plus, you know, if a pooled
4 fund is created in the legislature for another
5 purpose, you know, I think that that's what we're
6 getting to. So we need some clarity around this whole
7 issue because it seems that it's murked up. But thank
8 you. I appreciate your clarifying that part of it for
9 us.

10 Chuck.

11 MR. HELGET: Madam Chair and Members of the
12 Board. I'm Chuck Helget, representing Republic Waste
13 Services.

14 Board Member Kuehl, I can't help bantering
15 back to you. You stole my closing line when you said
16 earlier that we've given enough money, we don't want
17 to give any more.

18 CHAIRPERSON BROWN: But you're getting
19 paid --

20 BOARD MEMBER KUEHL: You don't have to pay
21 my consulting fee either.

22 MR. HELGET: First of all, I'd very much
23 like to echo the other comments about Bill.

24 Bill, your calm demeanor and your
25 willingness to always respond to phone calls is

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1 seriously going to be missed in this whole process.
2 It's been a hard couple of years going through the
3 2296 process, but you've made it easier. Thank you.

4 And my compliments to Staff, also, on
5 preparation of the report to the legislature from the
6 Board. We certainly believe that brevity is the way
7 to go with this report. And we think in terms of at
8 least process, the way the report is constructed right
9 now it represents fairly and accurately the process
10 that we have followed since AB 2296 was adopted in
11 2006, I guess.

12 We do believe, however, that the numbers in
13 the report are somewhat confusing, the numbers that
14 reflect the magnitude of the problem that we have
15 confronted and continue to confront, in that they do
16 greatly inflate the perceived risk to the state and
17 that they really do not accurately reflect recent
18 actions by the Board and in going forward, really, the
19 reality of what the future looks like for landfills.

20 For example, my favorite example is the
21 Phase I regulations. You adopted the Phase I
22 regulations, which required clarity in reporting our
23 cost estimates. You've increased the standards for
24 preparing those cost estimates. And by the very
25 nature of those regulations, you have reduced the risk

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1 to the state because our cost estimates are going to
2 go up. They're going to more accurately reflect the
3 true cost of closure. And so we believe firmly that
4 that is one of the elements that should be
5 incorporated into these cost estimates.

6 Further, the estimates in your report -- and
7 we've discussed this in the past -- are based on
8 model. And that model is only as good as the data and
9 the assumptions that go into that model. And as we
10 have also noted in the past, we have concerns about
11 the practical accuracy of those assumptions.

12 As an example, the report states that the
13 Board estimates the 100-year cost of post-closure
14 maintenance to be 5.6 billion over 100 years, but only
15 about 2 billion is currently assured, and the
16 potential default financial exposure could range from
17 nearly 300 million to 900 million over 100 years.

18 In fact, the recent Board action to require
19 a rolling 30-year financial assurance mechanism with a
20 maximum allowed step down to 15 years will virtually
21 eliminate those unassured risks. Thus the 5.6 billion
22 estimate has really no relevance to the real world,
23 and claiming an unassured risk balance of 3.56 billion
24 is misleading at best.

25 The post-closure maintenance default

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1 estimate of 300 to 900 million is also misleading
2 since 900 million represents the status quo and
3 includes \$667 million worth of divestiture risk.

4 Members of the Board, no one testifying in
5 front of you is considering the status quo as
6 acceptable or a likely outcome of those regulations,
7 and it shouldn't be the basis for your calculations
8 and your representation of the risk to the
9 legislature.

10 The option recently adopted by the Board,
11 the 30 X with an earned drop-down to 15 X, carries a
12 much lower default risk. We believe that default risk
13 is somewhere between 111 and 185 million dollars. I
14 almost said "billion."

15 The corrective action part of the report,
16 the report states that the Board analysis indicates an
17 estimated 1.8 to 2.5 billion in reasonably foreseeable
18 corrective action costs that can be expected over the
19 next 100 years, of which 134 million is currently
20 assured.

21 First, the recent Board action to require
22 corrective action cost to include in all cases cap
23 replacement would require about \$1 billion of new
24 financial assurances. And to the best of our
25 knowledge, every representative of the regulated

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1 community, both public and private, believes that
2 there is really no factual basis for the 1.8 to
3 2.5 billion estimate. This range does not reasonably
4 represent -- does not represent reasonable nor
5 foreseeable costs.

6 The most useful number for the legislature,
7 in our view, would be the Board's best estimate of the
8 potential default estimate for reasonably foreseeable
9 corrective action, excluding divestiture risk over 100
10 years, which is well under \$200 million.

11 Finally, we support the report's call for a
12 pooled fund but caution that our support relies on a
13 more accurate cost estimate of the risk to be covered
14 by that fund. Once submitted by the Board, this
15 report will become the basis for subsequent actions by
16 the legislature, and we believe that delaying the
17 report for further review is prudent and, therefore,
18 we support the staff's recommendations. Thank you.

19 CHAIR BROWN: Thank you, Chuck.

20 Any questions? No questions right now --
21 for now. Thank you, though. Appreciate that.

22 Next speaker, Nick Lapis.

23 MR. LAPIS: Good morning, Madam Chair and
24 Board Members. Nick Lapis with Californians Against
25 Waste.

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1 CHAIRPERSON BROWN: Is your microphone on,
2 Nick?

3 MR. LAPIS: I don't think I have any control
4 of it.

5 CHAIRPERSON BROWN: Yeah, there's a button
6 down there that says "Push." Make sure it's lit up,
7 and then maybe just speak closer. You're tall. There
8 you go. That's easier. Thank you.

9 MR. LAPIS: My comments are pretty in line
10 with things we've said in the past, so I'm not going
11 to go into too much detail. But we feel like at this
12 point we haven't necessarily accomplished all that we
13 think we have and all that we have claimed that we
14 have in this report. We don't necessarily know what
15 costs are still unassured, and there a lot of things
16 that we haven't handled -- that we know we haven't
17 handled, that we haven't brought out in this report,
18 and we think at this point it's a little premature to
19 be claiming victory and sort of saying, "Mission
20 accomplished. We did the Phase II; we did the
21 Phase I. Now we're going to have a pooled fund, and
22 that's it -- oh, and we'll handle divestiture as
23 well." And we sort of feel like that's the message
24 being sent in this report.

25 We still need to go back and address the

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1 major maintenance issues, which we don't feel is
2 covered. We still need to address the catastrophic
3 failure and the extraordinary corrective action. We
4 don't believe that's being covered either.

5 In terms of the financial mechanisms that
6 we're allowing to be used here and the risk that that
7 plays into, what effect does that have on our default
8 risk, what effect does that have on the numbers that
9 we have in this report?

10 In terms of non-water quality corrective
11 action specifically -- and last time you voted to move
12 forward on using a little bit more money but not
13 necessarily addressing the full risk from corrective
14 action in that package.

15 And at this point I think it would be
16 prudent of us to be honest in the report of what is
17 covered and what isn't covered and what the Board
18 still needs to do in terms of potential future
19 analysis, future rulemaking on all these different
20 areas. Thank you.

21 CHAIRPERSON BROWN: Do we have a question of
22 Nick?

23 BOARD MEMBER MULÉ: More of a comment than a
24 question, Nick. We have heard your concerns, and I
25 think that we've stated several times that this

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1 report, or whatever we call it, to the legislature is
2 not the end; and I want to stress that. We have said
3 that we will continue this dialogue and that this
4 report just represents, basically, our report to the
5 legislature on the fulfillment of AB 2296.

6 But at least from my perspective, this is by
7 no means the end of the dialogue. We do -- as you
8 have mentioned, we have a number of issues that we
9 need to continue to discuss, and I, for one, plan on
10 doing that. And so I just want to make sure that
11 we're clear on that.

12 MR. LAPIS: Yeah, and I appreciate the
13 sentiment, and I think we would appreciate seeing that
14 in the report, something along the lines of these are
15 the things we know and we covered, these are the
16 things we don't know, necessarily, enough about but we
17 think we covered, these are the things we know we
18 didn't covered but need to go back to, these are --
19 you know, some more realistic assessment of all those
20 issues that we're still going to continue to work on
21 going forward, because it kind of does sound like
22 we're saying "Mission accomplished" in the report even
23 though I realize that's not the intent.

24 BOARD MEMBER MULÉ: Well, the report is just
25 to address AB 2296, so I guess that's my point is we

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1 are addressing fulfillment of the requirement of
2 AB 2296. But, again, we have stated many times that
3 this is not the end of the discussion by no means
4 because we do have so many other issues, you know, as
5 divestiture and other extraordinary corrective actions
6 that we need to address.

7 MR. LAPIS: Okay. Thank you.

8 BOARD MEMBER MULÉ: Thank you.

9 CHAIRPERSON BROWN: Thanks, Nick.

10 Our next speaker is Rachel Oster, Recology.

11 MS. OSTER: Good morning, Madam Chair,
12 Members of the Board. My name is Rachel Oster,
13 representing Recology.

14 I don't want to be redundant, so I just want
15 to say that I echo the comments that Chuck and Glen
16 have made about the status quo estimates that have
17 gone into the costs represented in the report to the
18 legislature. But I did want to make one point about
19 something that's missing from those costs that is of
20 concern to Recology.

21 As the Waste Board has a strategic directive
22 to reduce the amount of organics going into landfills,
23 Recology has that same strategic directive. We do
24 this through composting, through looking at
25 alternative technologies, and we -- and we believe

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1 that this limits the environmental threat that
2 landfills can pose, and we think it's disheartening to
3 see that this isn't covered or taken into
4 consideration in the costs.

5 We had a workshop yesterday on financial
6 incentives to reduce organics going into landfills to
7 meet the strategic directives, and it's my feeling and
8 Recology's feeling that we wouldn't be giving grants
9 and loans to move away from organics disposal if we
10 didn't think that there was going to be a real
11 environmental benefit to reducing organics in
12 landfills. So we would like some more time to revisit
13 these issues and take this, among other things, into
14 consideration, those cost estimates. Thank you.

15 CHAIRPERSON BROWN: Hang on, Rachel.
16 Sheila?

17 BOARD MEMBER KUEHL: I think your point is
18 very well taken for a new landfill, but we're talking
19 about closing 252 landfills over the course of a
20 number of years, all of which have organic material in
21 them.

22 MS. OSTER: Right. Yeah, I think that there
23 are other technologies that are on the horizon that
24 will take care of that. I mean, I think mining is a
25 real possibility. Plasma art technology is -- so

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1 closed landfills do have -- I think there's a
2 potential to see them as assets, going into the
3 future, and to take that into consideration as well.

4 BOARD MEMBER KUEHL: We might be able to
5 reduce financial assurances in 50 years when we see
6 this technology, I think.

7 MS. OSTER: That is a possibility.

8 CHAIRPERSON BROWN: Thank you, Rachel.

9 Next speaker is Herman Robbins from Kern
10 County.

11 MR. ROBBINS: Good morning. I'd like to
12 thank the Board for giving me the time to just come
13 forward and just kind of express some of the
14 concerns that the --

15 CHAIRPERSON: Herman, can you pull your
16 microphone. Thank you.

17 MR. ROBBINS: How's that?

18 I would just like to thank the Board for
19 giving me the opportunity to come down this morning to
20 express what some of our concerns are regarding this
21 legislation and the proposal to approve this
22 resolution. But, first, before I get started, I would
23 like to thank the Board for a couple things: First of
24 all, we've been the recipient of a couple of loans
25 that we received from the Board, and I would like to

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1 thank the Board for that. Second, I would like to
2 congratulate Bill on his retirement. I wish I was
3 there. That's all I can say.

4 But without holding up a lot of time and
5 going into a lot of things that have already been
6 said, we echo -- and we are part of the signatory to
7 the letter that Glen Acosta has sent, and we have been
8 totally against the creation of a pooled fund. We
9 feel as though a pooled fund is basically is being
10 created, basically, to solve any threats that may
11 occur to the environment. And a pooled fund is
12 basically created to, basically, protect the state
13 from financial -- any financial impact from just
14 something that's been unexpected.

15 And with that, that kind of talks to like
16 what Mike Mohajer was saying is that's kind of like an
17 insurance. Any threat that's to the state is actually
18 a threat to the citizens of the state of California,
19 and maybe we are trying to solve this problem at the
20 wrong level.

21 If you go back and you try to create a
22 pooled fund and you try to make those who are the
23 stakeholders go back and pay for it or to go back and
24 deal with promises that you have already made to
25 stakeholders, you basically -- it's just too difficult

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1 to do, and maybe it's something that should be
2 basically placed as a tax to everyone else. But
3 that's something outside of this Board's realm. But I
4 think we're trying to attack it at the wrong level.

5 Kern County also disagrees with the
6 possibility of a complete cap failure. Most landfills
7 are -- they're maintained; they're maintained on a
8 monthly basis. We go through inspections. We go
9 through the Water Board. And if a site is maintained,
10 it's -- complete failure of the cap is almost --
11 that's something that's just not going to happen.

12 And in order for us to get out of
13 maintaining these sites, what we're saying is that
14 what we're going to do is we're going to do away with
15 the regulatory agencies, and I don't think the Water
16 Board is going to go anywhere.

17 What we do suggest, though -- and I know the
18 Board is trying to move quickly through this -- is
19 that I would suggest that maybe staff members -- we
20 would like to invite them to come down and visit, say,
21 like Kern County or other counties to maybe see what
22 it is that we're dealing with and maybe some way we
23 can bridge that gap. And you can come in and you can
24 find out, you know, what our financial resources look
25 like, why are we so against creating it, doing it this

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1 way, just what is it that we're up against. Maybe you
2 can understand our world a little bit better. Thank
3 you.

4 CHAIRPERSON BROWN: Thank you, Herman.

5 Our next speaker is George Larson.

6 MR. LARSON: Thank you Madam Chair. George
7 Larson, representing Waste Management.

8 I too will try not to be repetitive, but one
9 thing I will be repetitive on is standing in line to
10 congratulate Bill Orr. I'm going to say that I
11 congratulate him more than the previous speakers but
12 certainly not as much as you because you're losing him
13 as a staff person. I will miss him more because I was
14 also a fellow staff person with him, so I've known him
15 from both sides of the dais, and he is certainly a
16 terrific leader, a thoughtful person, and one of your
17 most competent staff. So I know you're going to miss
18 him, and I wish him luck.

19 Back to what I will try not to be repetitive
20 about is expressing on behalf of Waste Management and
21 me too, if you will, for the testimony -- in fact,
22 eloquent testimony provided by Chuck Helget, so -- and
23 also Glen Acosta's comments on the impacts on
24 utilizing the total replacement of a closure cap as a
25 benchmark really doesn't seem to be substantiated in a

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1 lot of scientific testing.

2 So with that, I support Mr. Rauh's
3 recommendation that there needs to be further
4 refinement of the numbers and a further review of the
5 information to be contained in the report. Thank you.

6 CHAIRPERSON BROWN: Thank you, George.

7 Chuck, can we get a copy of your comments to
8 the Board Members? At least I'd like to see them with
9 some of the information numbers.

10 And then I'll go to what I think is our last
11 speaker, given that I don't know if everyone's put
12 their forms in, but Larry Sweetser.

13 MR. SWEETSER: Good morning, Board Members.
14 Larry Sweetser on behalf of the Rural County ESJPA. I
15 also want to echo the tribute to Bill. Wish you well
16 in your next endeavor.

17 I do want to start out with a point of
18 agreement on the regulations and that post-closure
19 maintenance discussion on being -- for more than 30
20 years. Those of us with a pledge of revenue in the
21 public sector always felt that that would be a
22 requirement anyway. In fact, our pledges recognize
23 that fact, in that they're not limited on 30 years.
24 Most of them have a provision that says -- states that
25 that jurisdiction will provide financial assurance

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1 regardless of time, regardless of cost, we will find a
2 way to pay for that, so it is already recognized in
3 there.

4 Secondly, I do also agree with the parade of
5 folks on the concerns about the cost assumptions in
6 there. We do feel they're inflated. There will be
7 problems at landfills. There have been problems, but
8 the frequency of issues discussed so far we didn't
9 feel were realistic.

10 On the pooled fund, I think we've made our
11 point pretty clear and concerns about the concept of a
12 pooled fund. We understand the Board's desire to seek
13 authority for that. Continue to maintain that -- one
14 of the major concerns with that, the pooled fund, are
15 due to the fact that many of the details are lacking.
16 And case in point was Member Kuehl's discussion about
17 whether there should be an "s" or not on there. The
18 concept of a combined or single fund has been a major
19 issue. There's pros and cons both ways, and none of
20 those have been fleshed out so far. So that's one of
21 our concerns leading up to the pooled fund, along with
22 many others.

23 We also agree that the need for a pooled
24 fund has been lessened significantly. There's
25 increased scrutiny on the financial assurance

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1 estimates provided. The Board staff has much more
2 authority to look at those costs and scrutinize and
3 reject ones that they don't feel are valid. There's
4 also increased coverage of issues, some of the
5 non-water quality corrective actions. All of those
6 are under consideration of things that need to be
7 included or considered.

8 The fact that we went to a rolling 30 years,
9 30 X multiplier, also allows for more funds set aside
10 on a local basis. And even the discussions on the
11 pooled fund, it required that whatever operator,
12 public or private, has to exhaust many other
13 mechanisms before they even get access to a pooled
14 fund. So a lot of that has decreased the need for a
15 pooled fund.

16 The other -- you had also asked about the
17 use for the pooled fund. There will be those cases
18 where somebody completely walks away from a site.
19 That happened in the past, and the Board had to use
20 some funds for that. But in all likelihood, the most
21 significant need, at least on the public sector, is a
22 short-term loan because you would also want that funds
23 to be recovered in there.

24 There have been cases where we've had to put
25 extraordinary costs into a landfill, but the

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1 jurisdiction found a way to get that funding without a
2 pooled fund. They will continue to probably utilize
3 that even with or without a pooled fund.

4 The other thing to keep in mind is that the
5 pooled fund concept also overlaps with another of the
6 Board's program, and that's the 2136 program for sites
7 that are unwilling or unable to pay for whatever costs
8 are associated. So any discussions of a pooled fund
9 would have to take into account the overlap with that
10 fund.

11 Lastly, if you do go forward with forwarding
12 an executive summary with documents attached -- and
13 I'm not -- I'm trying to think of what 14 documents I
14 would select to include in that package because I'm
15 not sure what you would do with those because there
16 have been so many. It would help for those of us,
17 probably, to have a look at those or know what they
18 are, but I would also request that the Board include a
19 lot of the stakeholder comments as part of that
20 process in whatever package goes forward because some
21 items we've reached agreement on, some we still
22 maintain there's concerns, and we feel that would be
23 appropriate to forward that with those concerns
24 forwarded.

25 So with that, thank you very much.

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1 CHAIRPERSON BROWN: Thank you, Larry.

2 Do we have any questions?

3 BOARD MEMBER KUEHL: (Inaudible).

4 CHAIRPERSON BROWN: Go ahead.

5 BOARD MEMBER KUEHL: I think it's fabulous
6 that you've all praised Bill Orr and then knocked down
7 his numbers. So even though I have -- like all
8 legislatures, I have deep pension envy because, of
9 course, we don't get one -- I do congratulate as well.
10 But what I'd like to, if I may, Madam Chair, is to ask
11 Bill, because everybody says, "Oh, these numbers are
12 inflated," for some review, perhaps, of how these
13 numbers were -- the range appeared in his calculations
14 because I think we ended up in mid range, frankly, on
15 corrective action. Remember this is not a -- this
16 addition, it increases the corrective action assurance
17 to include non-water related possibilities, but it
18 still includes the water related possibilities. So I
19 wonder if we can have some comments by Bill about
20 those ranges.

21 MR. RAUH: Certainly. If I can just make
22 one sort of introductory comment to some of the
23 concerns that have been raised about numbers, I think,
24 deal with the brevity of the report in its attempt to
25 describe what we think was the condition the Board

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1 found itself in at the beginning of the 2296 process,
2 in other words, what was the total financial
3 requirement to be able to carry out corrective action
4 over a hundred years, what amount of that was assured
5 and not assured in terms of financial instruments in
6 place that would run out over different periods of
7 time.

8 And I think in covering that information and
9 then trying to bring from that down to the point in
10 which the Board has made either decisions on
11 regulations in terms of Phase I or in terms of making
12 a recommendation -- or directing Staff, rather, in
13 terms of what to develop as part of Phase II, again,
14 in the brevity, I don't think we covered enough of the
15 bases to fully describe how we went from a base
16 condition to the three to four hundred million dollars
17 that would be proposed for a pooled fund and that
18 that's all the risk that is left with respect to the
19 regulatory programs that you are directing we put in
20 place.

21 So that's one of the things, I think, we
22 said, in fact, when we met with some of the industry
23 representatives. It was pretty clear that the report
24 had not stepped through that so that it was
25 understandable with -- because of the brevity that we

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1 utilized.

2 But with that, I would like to turn to Bill
3 to address your specific question.

4 MR. ORR: Thanks, Ted.

5 Real quickly, in terms of looking at the
6 numbers, first of all, in pulling the numbers together
7 in the split between what could be addressed through
8 the regulations and what may require a pooled fund,
9 Staff has made an attempt in any of the options that
10 we've presented to match up how much exposure there
11 is, how much is addressed through the regulations, and
12 what's left.

13 And so as far as double-counting and some of
14 those notions, we've tried to present balanced options
15 for all of the recommendations that we've made. And
16 so, for example, in regard to the numbers that are in
17 the report today, the range that we've presented for
18 post-closure maintenance, the \$100 million level is
19 essentially what would be left at 30 X. That's the
20 lowest level that we've done through our analysis.
21 That analysis is based on the actual post-closure
22 maintenance cost estimates that have been prepared for
23 all 282 landfills. We feel good about those numbers;
24 we feel good about those estimates.

25 In regard to the high end, as I think Glen

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1 Acosta indicated, the high end for post-closure
2 maintenance would include the standard defaults, but
3 it would also include the divestiture default.

4 Now, in the case of the option that the
5 Board's directives move ahead with, with the 30 X,
6 stepping down to 15, the Board has addressed
7 divestiture default, so that comes off the table. So,
8 again, it narrows that range. That leaves us, given
9 the Board's direction last month, with -- out of the
10 \$5.6 billion in exposure -- an estimate of between one
11 and two hundred million dollars default exposure. I
12 think we've done a great job.

13 Moving on to the corrective action side, the
14 numbers that we have are more estimate related than
15 actual cost estimates that have been prepared.
16 There's a couple of reasons for that: One of them is
17 that the current water quality corrective action is
18 fairly narrowly construed. It's only a certain kind
19 of thing. If you get a leak in a landfill, how long
20 would it take for that leak to be detected, how much
21 would it cost to fix that. That's currently the basis
22 for the reasonably foreseeable water quality
23 corrective action. So it's a fairly narrow band of
24 activities.

25 The other part is only about half the

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1 landfills have that number in place, and so we can
2 tell you what that is for those landfills, and that's
3 where the \$134 million came from. That's how much is
4 actually assured if you total that 46 percent of the
5 landfills that have those reasonably foreseeable
6 corrective actions in place. That's a real number.

7 In regard to the \$1.8 billion, that was
8 using the financial exposure model that was developed
9 by ICF, the contractor, from small, medium, and large
10 corrective actions at small, medium, and large
11 landfills, using the default rates that we've talked
12 about for several months. And it was the frequency
13 and the type of corrective action, and to the extent
14 that it's available, the costs were validated through
15 Staff surveys, looking at corrective actions over the
16 last 15 years, and they were in that ballpark. So
17 that's where the \$1.8 billion came from.

18 Where the \$700 million came from for major
19 maintenance was we took the real cost estimates that
20 have been prepared for closing the landfill, and our
21 assumption was that 90 percent of the costs,
22 typically, of closing a landfill is replacing the
23 cover. And, if you had to replace the cover, it would
24 be least as expensive as that. And so we took the
25 real cost estimates. We again ran it through the

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1 financial exposure model over that 100-year period
2 that we've used consistently throughout our analysis.
3 You don't actually have a final cover failing or
4 needing to be replaced until you place it, and so
5 there's a number of the landfills that are still open
6 that are going to be open for that 100-year period.
7 So those, essentially, are not part of that failure
8 analysis because the cover's not even in place. So
9 that's where the first reduction is.

10 And then beyond that, it uses the
11 frequencies of once every 200 years for the
12 replacement of that cover. That could either be as a
13 result of a failure, like early on in the life of the
14 landfill, or it could be when the final cover wears
15 out and can no longer be repaired or -- by just doing
16 a part of it. So that was sort of the assumptions
17 that went into coming up with that figure.

18 So put it all together -- and the Board has
19 addressed through its current regulatory proposal the
20 vast majority of the combined corrective action and
21 post-closure maintenance cost, and that leaves that
22 300 to 400 million dollars left that could be
23 addressed through a pooled fund, and there's really
24 not much more through the regulatory approach that we
25 could do to lower that number below that.

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1 CHAIRPERSON BROWN: Can I ask a follow-up?

2 Okay. So point of clarification because I
3 understand the first part. As far as the 1.8 and the
4 corrective action, what we heard that I haven't heard
5 before through Staff analysis, did that take -- was
6 that modeling done and everything done prior to
7 Phase I, and did that take into account the correct
8 accurate cost analysis of financial assurance, and was
9 that taken into consideration when -- or are those
10 numbers adjusted or correctly reflect Phase I actions
11 that we took as well as -- I think what we were
12 looking for after the workshop is, if we were to do
13 30 X with a step down 15, would that cover a larger
14 amount or medium amount, negating the need for more
15 corrective action because we cover it? That's two
16 questions. Sorry.

17 MR. ORR: Let me try the first part. In
18 regard to Phase I, Phase I improves the quality of the
19 post-closure maintenance cost estimates. That's
20 separate from corrective action. We believe that, to
21 some degree, the cost estimates that we currently have
22 are low and as a result of the Phase I regulations as
23 we get the revised cost estimates in, that some of
24 those numbers are going to go up. So I don't think
25 they are currently overestimated. If anything,

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1 they're probably somewhat underestimated. But it
2 really does not have any bearing on the corrective
3 action cost estimates.

4 CHAIRPERSON BROWN: Well, no, but I'm
5 getting to a question that Sheila asked earlier about,
6 you know, when we were looking at some of these
7 financial assurances, it was more trying to right-size
8 it, and that's what we were talking about,
9 right-sizing the different funds to assure the state
10 but not overburden both the ratepayer because,
11 ultimately, it's the ratepayers as well as the
12 stakeholders. So that's my question, and I hadn't
13 heard that before in that analysis, or line of
14 thinking hadn't really come out in my recollection.

15 MR. ORR: Okay. Well, yeah, I think, as far
16 as -- again, as far as the post-closure maintenance
17 part, you know, I think that that really came into
18 play when it came to the discussion of the need for a
19 contingency in addition to that. I think we felt that
20 that was an extra thing that we had already addressed.
21 I think we're in good shape regarding post-closure
22 maintenance.

23 CHAIRPERSON BROWN: But we're hearing that
24 we are layering and layering and layering and
25 layering, so I'm trying to get back to what we were --

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1 what the intention is and where maybe we've
2 overlayed or maybe we need to delayer and spread
3 things a little differently.

4 MR. ORR: In regard to -- in regard to
5 post-closure maintenance, I think that the residual
6 amount that we've talked about, that one to two
7 hundred million dollars, is a small amount of that
8 \$5.6 billion that we've estimated. And, really, I
9 think the decision on the Board's part is whether or
10 not we have done enough and that's good enough or do
11 you want to get that remaining amount through the
12 pooled fund.

13 There's also the discussion that we had
14 quite a bit of last month or -- well, going back for a
15 number of months in terms of the cost-effective amount
16 between 15 X and 30 X. And I think that if the Board
17 wants to discuss further where that "sweet spot" is,
18 it's in that range in terms of -- but in terms of
19 what's cost-effective to the landfill operators versus
20 what should be addressed through the pooled fund, you
21 know, that's something that the Board could talk about
22 more in terms of refining that.

23 CHAIRPERSON BROWN: Okay. We've come to the
24 point -- Chuck had a follow-up comment. I think we
25 still have some questions and comments, but we have

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1 reached the time on the clock where we need to take a
2 five-minute break for the Staff, and our very generous
3 court reporter needs to have her fingers take a break.

4 So, actually, given that it's 11:15, five
5 minutes enough?

6 THE REPORTER: That's fine.

7 CHAIRPERSON BROWN: We'll just take a
8 seventh inning stretch and come back for the rest in
9 about five minutes.

10 (Whereupon, a recess was taken from
11 11:12 a.m. to 11:24 a.m.)

12 CHAIRPERSON BROWN: We're going to call this
13 meeting back to order.

14 Kristen, can you call the roll.

15 EXECUTIVE ASSISTANT GARNER: Kuehl?

16 BOARD MEMBER KUEHL: Here.

17 EXECUTIVE ASSISTANT GARNER: Laird?

18 BOARD MEMBER LAIRD: Here.

19 EXECUTIVE ASSISTANT GARNER: Migden?

20 BOARD MEMBER MIGDEN: Here.

21 EXECUTIVE ASSISTANT GARNER: Mulé?

22 BOARD MEMBER MULÉ: Here.

23 EXECUTIVE ASSISTANT GARNER: Brown?

24 CHAIRPERSON BROWN: Here.

25 Thank you, Kristen.

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1 Okay. Chuck? I invited people to come back
2 for clarification or additional information during
3 this dialogue and discussion and as we continued to
4 ask questions, and Chuck has taken me up on my offer.

5 So, please.

6 MR. HELGET: Madam Chair, Members of the
7 Board. Chuck Helget, representing Republic Services.

8 There was an earlier dialogue between Board
9 Member Kuehl and Glen Acosta that I would like to step
10 into, if I may, for a moment. You asked, I thought, a
11 very good question: What do we envision a pooled fund
12 providing funding for?

13 And there's been a lot of discussion about
14 this, but there really hasn't been anything clear and
15 concise that I think we've really kind of narrowed in
16 on, so it's a pretty broad topic to discuss, but I
17 thought I would at least give you my perception of
18 what we think a pooled fund should be used for. And
19 it really is a fund that we hope never would be used.
20 It's a fund that would be dedicated to those rare
21 defaults that might occur. And, if everyone is doing
22 what they should within the system, that fund is there
23 as a backup insurance policy for the state. And that,
24 again, the best insurance policy, I believe, is one
25 that's never used.

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1 The other part that I'd like to wander into
2 a little bit is -- cautiously and carefully -- into
3 the corrective action side of the equation and would
4 like to also submit to you that we talk about
5 replacing a cap on a landfill. And from industry's
6 perspective, we're saying that that is unforeseeable,
7 it would be a rare, rare occurrence. Could some
8 damage occur to a cap? Certainly. But should that
9 cap be continuously maintained and repaired throughout
10 the process? Absolutely.

11 A total cap failure, at least in my view,
12 would actually be one of those occurrences that
13 probably would be covered under the default side. I
14 mean, if a total cap failure occurred without --
15 couple of situations could result: A cap failure
16 occurs today at one of our landfills. Republic
17 Services would stand up and pay for replacement of
18 that cap, whatever the cost is. If a cap failure
19 occurred to someone who does not have the financial
20 resources to pay for that, then what you would
21 probably end up with is a default.

22 And so I guess in my view when we start
23 talking about cap failure, we've stuffed that into the
24 category of corrective action, and I think we should
25 not have. I think that that is such a rare occurrence

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1 that, in fact, that is -- with a pooled fund in place,
2 that is one of those situations that gets covered by
3 default.

4 BOARD MEMBER KUEHL: I appreciate the
5 comments, but we don't have a pooled fund in place.
6 And given the fact that the legislation failed once
7 and could -- you know, every two years, we have 57 new
8 members of the legislature -- could definitely fail
9 again.

10 So it seems to me that what we're looking at
11 in terms of corrective action is some guarantee that
12 there are funds available for something that goes
13 beyond everyday maintenance.

14 The range for corrective action is actually
15 higher, the top end of the range, for estimates on
16 the -- from the models on corrective actions, it's
17 higher than the cost of the total cap -- cover
18 replacement.

19 So, again, I think what we're trying to do
20 is to protect the state as much as possible from
21 having to pay for, you know, anything. And what we
22 did was we got it down to where the state might be
23 liable for \$300 million if things go wrong and not
24 even if everything goes wrong.

25 So I think in terms of corrective action,

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1 it's hard to explain in a way because it's not
2 necessarily tied to an actual failure of -- or a cap
3 replacement, it's really sort of tied to a median
4 number, which at the moment equates with cap
5 replacement. So we could choose a higher number but
6 decided not to. So we might want to look at that
7 again because I think it's gotten us into a discussion
8 on how, "Well, this just isn't going to happen and,
9 therefore, we don't need to put this money in," when
10 what we're really looking for is an adequate guarantee
11 in the corrective action arena for that which exceeds
12 regular maintenance.

13 MR. HELGET: If I may respond to a couple of
14 points. Again, I would harken back to one of my
15 comments that were made earlier about the accuracy of
16 the numbers, and Bill has done a very good job, I
17 think, of clarifying in some cases that the numbers
18 have changed and will probably continue to change.

19 I believe I'm not quoting you directly,
20 Bill, and correct me if I'm wrong here, but one thing
21 you did say is that corrective action estimate, the
22 several billion dollars in corrective action, was
23 pretty much an estimate, it's not a hard and fast
24 number. There's a lot of ifs and what ifs that went
25 into calculating that number.

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1 So I would submit to you that, while you
2 believe you've picked the mid range number, my concern
3 is that the extremes aren't necessarily that accurate
4 and that we're ending up with a mid range number that,
5 at least in our view, is perhaps a top end number.
6 And I appreciate the dialogue and debate on that
7 because I think we could -- if we sat down, I think we
8 could show with a little bit more accuracy what that
9 range really truly is.

10 BOARD MEMBER KUEHL: Well, I think everybody
11 ought to remember that there's going to be a public
12 comment period on the proposed regulations, potential
13 changes, potentially another public comment period if
14 the changes are significant enough. This is a letter
15 to the legislature.

16 And although it's -- I remember how
17 necessary it always was for advocates to make their
18 points wherever a microphone opened up because
19 otherwise we're afraid the decision-makers didn't
20 quite know they were serious, and I really appreciate
21 that from everybody. This is obviously, as the Chair
22 said, not your last or even one of your, you know,
23 latest opportunities to do this.

24 And I think what we're saying to the
25 legislature is we have fulfilled the requirements of

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1 the legislation. And perhaps, you know, maybe we need
2 to clarify so that they really get it. We're now
3 going into a public comment period which we just put
4 off. So there's going to be plenty of opportunity for
5 more substantive dialogue about the regulations, but I
6 appreciate everybody needs to make their point every
7 time a point can be made. But we're not done yet with
8 this. We're simply saying to the legislature, Here's
9 where we are and what we've put out for comment.

10 CHAIRPERSON BROWN: Thank you, Sheila.

11 And that's -- you know, I think everybody
12 realizes that, but this is a long process, so -- I
13 mean, not long. It's been a long process, and we
14 still have the comment period; the regs haven't gone
15 out. We're just sort of grappling with what to send
16 to the legislature that accurately reflects where the
17 Board is. So Glen wants to speak also.

18 So I don't know if you have a wrap-up
19 comment, Chuck, or another question.

20 MR. HELGET: Very quick wrap-up comment.
21 Just, again, support the "s" in the word "fund." I
22 think that's a major concession to Mr. Mohajer, if
23 nothing else. And that's what we've envisioned. I
24 don't think that it is something that we've not ever
25 envisioned, that this would have to be a single fund.

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1 I think we've talked about the various options,
2 including a voluntary fund.

3 CHAIRPERSON BROWN: We have, and I think
4 those are the kind of clarifications that we initially
5 started talking about although we've expanded the kind
6 of discussion today, but we have talked about multiple
7 funds. We have talked a lot of different things and
8 didn't think we needed, in this document, to really go
9 through that lengthy analysis of one and the other
10 because we hadn't finalized it. That's kind of a
11 discussion for the future. And as both Sheila and
12 Rosalie have mentioned, this is just a report to the
13 legislature, this is not us creating a pooled funds or
14 any such thing, so -- but it's a step in the process,
15 and there's many more to go.

16 So I appreciate that, and I will ask --
17 invite Glen up for a couple comments, and I know
18 Rosalie has a couple of questions, so --

19 MR. ACOSTA: Thank you, Madam Chair. Glen
20 Acosta with L.A. County Sanitation Districts.

21 And just a follow-up comment on the
22 non-water quality corrective action. The stakeholders
23 had a variety of workshops on this very topic, and one
24 of the things that was done was to talk about what
25 would be a non-water quality corrective action, how

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1 much would it cost, and so on.

2 And in one of those workshops, it was
3 determined that in almost all cases the non-water
4 quality corrective action cost would be lower than
5 that of a water quality estimate. So that was the
6 basis for saying, "Well, if it's always going to be
7 lower than the water quality, why not just have one
8 fund and you can tap into it because the fund is large
9 enough, and then you can pay it back over a certain
10 time period."

11 So it's not more than the water quality.
12 It's -- through all the stakeholder input, it's less
13 than. And so I just want to put that in relative
14 terms. Thank you.

15 CHAIRPERSON BROWN: Hold on.

16 BOARD MEMBER KUEHL: So if I insure my
17 entire car and it costs less to replace auxiliary
18 equipment that was not included with the car, I
19 shouldn't up my insurance because the total value is
20 more? I mean, we're adding the potential to pay for
21 events that are not covered by the Water Board.

22 MR. ACOSTA: And I understand that point,
23 and that's why in the letter that you saw we
24 appreciated that point and said, Okay, if you really
25 want two funds, that's fine as long as it's a

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1 reasonable and foreseeable event and coverage -- and
2 money would put in or financial assurance would be set
3 aside for that event. And so replacing the entire
4 cap, we don't see that as a reasonably foreseeable
5 event.

6 BOARD MEMBER KUEHL: Thank you, Madam Chair.

7 CHAIRPERSON BROWN: Thank you, Glen.

8 Anything before we ask further questions?

9 (No audible response.)

10 CHAIRPERSON BROWN: Okay. Rosalie?

11 BOARD MEMBER MULÉ: Thank you, Madam Chair.

12 I think, really, my questions and comments
13 will be addressed better during the public comment
14 period, but since I did ask these questions of Staff
15 and they provided a response to all of this yesterday,
16 I think I'll just use this opportunity to ask a
17 further question.

18 Basically, I had asked Staff to basically
19 identify what activities are covered under
20 post-closure maintenance and then what activities
21 would be covered under the corrective action. And so
22 the question I have for Staff -- and I think Glen
23 Acosta and Herman had alluded to this is -- if the cap
24 repair and partial replacement are included in the
25 post-closure maintenance activities -- which again we

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1 have the 30 X, rolling 30 X, which we can step down to
2 15 X -- if those activities are included as ongoing
3 maintenance for 30 years-plus, then why would a full
4 cap replacement be anticipated in corrective action?
5 I mean, to me, that's almost counterintuitive that
6 we're saying that even though we're maintaining this
7 cap ongoing indefinitely, then we're saying also,
8 though, that, "Well, even though we're maintaining it,
9 we think we're going to have to replace it at some
10 point in the future." And so that's what I am having
11 trouble with, you know, how -- why are we using the
12 cap replacement as a basis for non-water quality
13 corrective action?

14 MR. RAUH: Well, I'll give a general
15 response, and then to the extent that Bill wants to
16 chip in with more specifics.

17 I think that as we look at the kind of
18 routine maintenance that's covered under post-closure
19 maintenance, typically this is the kind of activity
20 that may result in a periodic reseating of the cover,
21 dealing with minor grading issues associated, but that
22 is the kind of maintenance that typically is carried
23 out as part of post-closure maintenance. It might
24 also include repairing a small rip or tear if it's in
25 the cover material if you have liners being used in

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1 the cover.

2 When we look at corrective action where
3 we're talking about a total replacement of the cover,
4 a number of different issues could cause that. And if
5 I skip back quickly to post-closure maintenance, the
6 funds are not set aside to do that over the entire
7 hundreds and hundreds of acres of the site each year,
8 they are prorated to do a small portion each year. So
9 that's one of the reasons why, when you have a
10 relatively small amount each year for planned
11 maintenance, it's not going to be enough if you have a
12 major problem with a cap.

13 And going into what kinds of problems could
14 be dealt with under the notion of a full cap
15 replacement, for landfills that are using some sort of
16 liners -- material, for example -- under the soil, one
17 of the things that I think we're concerned about is
18 that most of these materials have relatively short
19 lives of warranty; in other words, the manufacturers
20 are not saying these materials are going to last a
21 hundred years, they're saying they might last ten or
22 five. Now, we all hope they're going to last longer
23 than that, but a cap of that type, you'd see the
24 material, generally, degrade consistently across the
25 entire landfill, you wouldn't see it just be destroyed

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1 in one area and then destroyed in another area where
2 you might be able to patch it with these small amounts
3 of maintenance that you provided.

4 So one of the reasons for using a cap as a
5 an alternative -- cap replacement as an alternative
6 would be in that situation where you've reached a
7 point -- it might be 50 years out, it might be 75
8 years out -- where this material is gone and you have
9 to replace -- or its effectiveness is gone and you
10 have to both remove all the soil cover and vegetation
11 and put one of these types of caps down, so -- and
12 that also might occur to soil over time as well.

13 BOARD MEMBER MULÉ: But I guess for me, it's
14 almost counterintuitive because we're saying we're
15 maintaining the cap. So if there are problems with
16 the cap in the post-closure maintenance piece of our
17 financial assurances, there is funding there to handle
18 it, and that's why we went with the 30, rolling 30 X
19 with a step down to 15 X because, again, there are
20 still financial assurances there to the tune of 15 X,
21 or more, that could address that. I'm just having
22 trouble with -- it's almost like we're saying, "Gee,
23 this first insurance policy of post-closure
24 maintenance probably won't work, so we're going to
25 look at putting a full cap replacement," which is, to

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1 me, not reasonably foreseeable; that is an
2 extraordinary event or catastrophic event, we're going
3 to put that in under the corrective action.

4 MR. RAUH: Well, all I would say is that the
5 post-closure maintenance is set aside. We're setting
6 aside funding to do a specific set of routine
7 maintenance kinds of activities, and they're not
8 viewed to be corrective action.

9 You know, an operator could decide that
10 they're going to increase their post-closure
11 maintenance because they see this kind of event
12 occurring with their particular landfill design. And
13 then I think we're not to the point of the specific
14 language in the regulations, but at that point, there
15 could be an offset or alternative for corrective
16 action, but we're not there yet. At this point we're
17 looking at the way these particular post-closure
18 maintenance plans are developed, and they're typically
19 with an amount set aside for maintenance that's
20 relatively small and envisioning not a significant
21 event like that.

22 BOARD MEMBER MULÉ: That's fine. Thank you.

23 CHAIRPERSON BROWN: Okay. Here's where I
24 think we are, and correct me if I'm wrong, please.
25 This is the report to the legislature. I think we

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1 still have some questions that will come as we develop
2 the regs and in the 45-day comment period and
3 receiving those back and providing direction and
4 there's opportunity to explore some of these issues.

5 I still am having trouble with the notion of
6 once we did this, it resulted in changes that, you
7 know, we recommend this versus this. So I'm still
8 going to need to grapple with, once we made this
9 decision on financial assurance and assure this much
10 more insurance to the state to cover these actions and
11 whether we adequately or overextended ourselves in the
12 subsequent, but that's me in my own mind. You know,
13 corrective action, is it necessary because we've taken
14 care of that with our action on financial assurance?
15 I'll hold that for the comment period.

16 But where we are today is on finding the
17 minor to mid minor revisions to the report to the
18 legislature on our fulfillment of 2296. The
19 legislation is very clear what the Board was to do and
20 report on, and that's what we're going to put in the
21 report. It's not going to contemplate anything beyond
22 that that is still under consideration in our
23 deliberations on the regs because the regs are the
24 regs. We just need to put those in place as well on a
25 separate track.

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1 So my only concern, Mark, is what we
2 discussed early on is that we do the revisions and we
3 adopt it in Strategic Policy. I don't know that that
4 should be our goal. I think if we look at it in
5 Strategic Policy and want to do it, one week is not
6 going to make a huge difference since we're looking at
7 minor/mid minor. I think we need to make sure that it
8 reflects what we've done and what we want to report to
9 the legislature, so I'm not going to hold us to doing
10 it in Policy. If we choose to do it in Policy, then
11 we choose to do it in Policy, but I think it gives us
12 a week to look at it and then a week to send it over
13 finalized and adopted.

14 Is that all right with everyone?

15 BOARD MEMBER MULÉ: Yes.

16 BOARD MEMBER KUEHL: Are we going to miss
17 the July deadline?

18 CHAIRPERSON BROWN: Well, we're going to
19 miss the July 1 deadline with Staff's recommendation
20 currently to make the minor revisions, and that's
21 where I asked Elizabeth if she could -- I mean, you're
22 the senate member and John's the assembly member. I
23 think it's appropriate to let them know that we have a
24 draft of the report, we'd like to make some revisions
25 to it and adopt it in July and send it over in July

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1 but miss the deadline of July 1st.

2 BOARD MEMBER KUEHL: Is there a revision
3 besides adding the "s"?

4 CHAIRPERSON BROWN: Well, I think there were
5 some revisions that Ted and Bill alluded to in Bill's
6 presentation and that I've heard from you.

7 MR. RAUH: That's correct, but they are in
8 the context of just making sure that we're accurately
9 portraying what the Board has done and proposes to do,
10 so there's a sentence here or a few word changes
11 there. I don't see any significant writing here.

12 BOARD MEMBER KUEHL: Does that have to come
13 back to us?

14 CHAIRPERSON BROWN: Well, if you delegate me
15 to approve it or -- I mean, I think that if they're
16 minor enough changes, then I can make the
17 determination whether it's substantive and needs Board
18 action, and we can certainly circulate it.

19 BOARD MEMBER MULÉ: If you circulate it, I
20 think that could work too.

21 BOARD MEMBER KUEHL: I would rather have us
22 meet the deadline if we can. Even though no one over
23 there is going to really care, I'd like us to meet a
24 deadline. And I think that it's so minor that if we
25 can see it -- and I would really appreciate it if the

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1 changes to the letter are, you know, underlined in my
2 electronic copy so I can kind of see it, but I would
3 feel comfortable having Margo say, Yeah, that's what
4 we discussed, and it can go.

5 CHAIRPERSON BROWN: And then -- okay. And
6 I'll circulate it for everyone to look at and, you
7 know, do strikeout and/or underlining corrections,
8 tracking changes so we can all see them. And I'll
9 review it, circulate to the Members, and then we'll
10 transmit it.

11 MR. RAUH: Great.

12 CHAIRPERSON BROWN: We do have the
13 clarification of all reports to the legislature need
14 to go through the administration and through their
15 process, so I will just say, you know, we do need to
16 do that. It's just procedural, but we'll make the
17 July 1st deadline for approval to sending over. Okay?

18 MR. LEARY: Thank you.

19 CHAIRPERSON BROWN: Thank you all. Thank
20 you all.

21 And we have one more item. It is ten to
22 12:00. Given that it's just one more item -- it is an
23 RMD zone loan -- I'd like to just plow through before
24 we adjourn.

25 And then I didn't mention prior to this, but

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1 the Board will go into closed session after we finish
2 with this item.

3 So I will ask Howard, do you want to start
4 the presentation?

5 MR. LEVENSON: Thank you, Madam Chair.
6 Still good morning, Board Members. I'm Howard
7 Levenson with the Sustainability Program, and we have
8 before you the last item of the day, which is Item 12,
9 consideration of the Recycling Market Development
10 Resolving Loan Program application for Ability Counts.
11 I'm going to turn it right over to Jeremy Callihan to
12 make this presentation; it will be pretty brief.

13 MR. CALLIHAN: Thank you, Howard.

14 Good morning, Madam Chair and Members of the
15 Board. For the record, my name is Jeremy Callihan.
16 I'm an assistant loan officer with the Recycling
17 Market Development Zone Loan Program.

18 Ability Counts is a non-profit organization
19 located in Riverside -- the City of Riverside within
20 the Agua Mansa Recycling Market Development Zone. In
21 1980 Ability Counts was established by Roger Cox and
22 Alan Schwerdt in order to provide individuals with
23 developmental disabilities meaningful vocational
24 training and employment. One of their largest
25 programs is for recycling used plastic hangers that is

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1 provided to them by retail stores within the region.

2 The employees first take the hangers that
3 are provided to them, and they sort them between the
4 ones that are useable and the ones that are not
5 useable. Hangers that are reuseable are packaged up
6 and resold to the retail stores for second- and
7 third-time uses.

8 Hangers that are not reusable are placed
9 into a granulator, and they are broken down into
10 residual plastics and metals. At that point the
11 plastic and metal is separated and sold to various
12 end-users.

13 If you will notice on page 2 of the agenda
14 item, there's a table labeled "Diversion and Jobs."
15 This is strictly for their recycling program that
16 Ability Counts has. One change to note is that in the
17 "Jobs," it is listed as 100 current employees to
18 increase by 30 for a total of 130. There are actually
19 currently 210 employees working for the recycling
20 program at Ability Counts. This loan would increase
21 that to between 30 and 75 new employees for a total of
22 240 to 285 new employees.

23 Receiving this loan would have a great
24 positive impact for Ability Counts but also the
25 disabled community located within the greater

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1 Riverside and Orange County areas.

2 This is Ability Counts' second loan, and
3 it's a request for \$685,000 for working capital. They
4 plan to use the money to make facility improvements to
5 help with their expanded recycling plastic hanger
6 process but also to improve some of the facilities for
7 their increase in employees.

8 On June 4th our loan committee met and
9 approved the loan with a 4-to-3 vote. The three "no"
10 votes were over concern about the current status of
11 the state's budget for fiscal year '09 and 2010.
12 That's mainly because Ability Counts does receive from
13 the state. This had no reflection on the business
14 itself and how they operate things, it was strictly
15 based off of concerns for the current budget.

16 Staff recommends that the Board approve
17 Option No. 1 and adopt Resolution No. 2009-85 and
18 approve an RMDZ loan to Ability Counts, Incorporated.

19 Unfortunately, the program director for
20 Ability Counts was unable to attend the meeting today
21 due to a family emergency. And this concludes my
22 presentation. If you have any questions, I'll try and
23 answer them as best I can. Thank you.

24 CHAIRPERSON BROWN: Sheila has a question,
25 and I'll follow up.

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1 BOARD MEMBER KUEHL: Okay. In the cover
2 letter from Howard, it indicates that the loan
3 approval would be conditioned on receipt of a letter
4 from DDS, essentially saying we're going to continue
5 the level of funding or some funding to Ability
6 Counts. That's a little unclear. But I don't see the
7 condition in the resolution, so we're not -- if we
8 approve the loan in the resolution as crafted, I don't
9 see that condition.

10 MR. LEVENSON: Member Kuehl, we often do
11 include conditions within the loan documents. We'd be
12 happy to be more specific with the adoption of this
13 resolution and add a phrase that --

14 BOARD MEMBER KUEHL: Here's the thing: The
15 resolution says "Whereas" -- and this is not any
16 reflection on Ability Counts, which is an excellent
17 program and one that I'm familiar with. It is just
18 that in our resolution, it says "Whereas, the loan
19 committee has considered the creditworthiness of the
20 applicant and has recommended the approval and
21 authorization," that's true on a 4/3 vote. It doesn't
22 say that we are ourselves taking responsibility for
23 conditioning the loan.

24 MR. LEVENSON: If I could point to -- and
25 I'm not sure this will be sufficient -- but point you

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1 to the bottom paragraph on that page, the "Now,
2 therefore, be it resolved" paragraph, line 4, "Subject
3 to all terms and conditions contained in the loan
4 agreement to be prepared by Board Staff," et cetera.
5 So I think that covers it in principle; I'm not sure
6 it's explicit enough.

7 BOARD MEMBER KUEHL: Okay. I guess if your
8 e-mail is part of the record so that we know what
9 those terms and conditions are, I think we can then
10 approve it.

11 This is going to be a tough one, given what
12 they did to DDS -- or what they're about to do. But I
13 think for our part, if we condition it on something --
14 it's a little unclear, though, what the condition
15 says, and maybe we have to see what the language is in
16 the loan document because they may continue to support
17 Ability Counts but not at the exact level that they
18 did before. So I don't know whether that's part of
19 the condition or if it's just a letter from the
20 department saying, "We're going to continue to provide
21 funding to Ability Counts." I think we need to
22 clarify that.

23 CHAIRPERSON BROWN: And that was my
24 follow-up question: To what degree are they reliant
25 on the funding from DDS in order it maintain

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1 operations? I mean, do they need to maintain it at
2 their current level or --

3 BOARD MEMBER KUEHL: Well, they were not
4 comfortable with having that discussed, as I
5 understood it, in detail.

6 My experience with 501(c)(3) even in the --
7 you know, when our budget gets cut, we go to a -- we
8 get better foundation funding because we need it. If
9 we don't get it from the state, sometimes we can step
10 up -- a major donor even in these days. So even if
11 they diminish the state funding, it wouldn't
12 necessarily mean that they were not creditworthy to
13 repay our loan eventually.

14 So I like this loan. I really want to be
15 able to make it. And I guess in the conditions, maybe
16 we don't want to hamstring them so much. Maybe we
17 want to ask if the department could issue a letter
18 saying they're continuing to provide funding but not
19 necessarily at last year's level. That's all, if it
20 becomes, you know, sort of the legislative history of
21 our vote up here.

22 CHAIRPERSON BROWN: Right. Well, and I
23 guess that's to my point. You know, if it has to
24 maintain, whether they're asking for at last year's
25 level, which is unlikely, or whether it can be a

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1 range.

2 MR. BLOCK: I was just conferring with
3 Shelly, and I think the loan committee was not -- and
4 that's probably one of the reasons it's not as
5 specific here. They were looking for some assurance
6 of some continued funding that would make it clear
7 that they could repay the loan, but they were not
8 insisting that it be at exactly the same level. They
9 wanted to allow it some flexibility, so, really,
10 it's --

11 BOARD MEMBER KUEHL: If it's in the loan
12 document, then we don't have to specify a level of
13 funding but that we want the department to say that
14 they're continuing to provide funding.

15 MR. BLOCK: At a level that we deem
16 indicates they'll be able to repay the loan, so
17 there's some judgment involved on our part.

18 BOARD MEMBER KUEHL: But are you asking DDS
19 to make that distinction?

20 MR. BLOCK: No. That would be us.

21 BOARD MEMBER KUEHL: Okay.

22 CHAIRPERSON BROWN: The only other question
23 I had -- and we may not -- given the last paragraph,
24 we may not need to, but we can always add in the
25 fourth "Whereas" regarding creditworthiness that

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1 "eligible applicant has recommended to the Board the
2 approval and authorization with conditions as noted in
3 the loan document to the eligible applicant."

4 I mean, I don't know if it's even necessary,
5 given the last paragraph, but we can make that
6 edition, "approval and authorization with conditions
7 as noted in the loan agreement."

8 Are you comfortable with it being just in
9 the last paragraph?

10 BOARD MEMBER KUEHL: Sure.

11 BOARD MEMBER MULÉ: I am.

12 CHAIRPERSON BROWN: Okay. Then scratch
13 that.

14 Any other questions regarding Ability
15 Counts?

16 (No audible response.)

17 CHAIRPERSON BROWN: Can I have a motion on
18 the resolution, then?

19 BOARD MEMBER LAIRD: So move.

20 BOARD MEMBER MULÉ: Second.

21 CHAIRPERSON BROWN: It's been moved by
22 Member Laird, seconded by Member Mulé.

23 Kristen, can you call the roll.

24 EXECUTIVE ASSISTANT GARNER: Kuehl?

25 BOARD MEMBER KUEHL: Aye.

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1 EXECUTIVE ASSISTANT GARNER: Laird?

2 BOARD MEMBER LAIRD: Aye.

3 EXECUTIVE ASSISTANT GARNER: Migden?

4 BOARD MEMBER MIGDEN: Aye.

5 EXECUTIVE ASSISTANT GARNER: Mulé?

6 BOARD MEMBER MULÉ: Aye.

7 EXECUTIVE ASSISTANT GARNER: Brown?

8 CHAIRPERSON BROWN: Aye.

9 The resolution passes. Thank you all very
10 much. We will now go into closed session and see you
11 all later.

12 (The Board went into closed session at
13 12:00 p.m.)

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REPORTER'S CERTIFICATE

I, HE SUK JONG, a Certified Shorthand
Reporter of the State of California, do hereby
certify:

That I am a disinterested person herein;
that the foregoing hearing was reported in shorthand
by me, He Suk Jong, a Certified Shorthand Reporter of
the State of California, and thereafter transcribed
into typewriting.

I further certify that I am not of counsel
or attorney for any of the parties to said hearing nor
in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my
hand this 29th day of June, 2009, at Sacramento,
California.

HE SUK JONG, CSR NO. 12918
Certified Shorthand Reporter